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THE INCOME-TAX AMENDMENT

THE question of the income-tax amendment of the federal Constitution is now before the country. The general movement in favor of its ratification by the state legislatures has suffered a serious set-back through the opinion expressed by the governor of the state of New York. In his judgment, the power to levy an income tax ought assuredly to be given to the national government, but the amendment proposed by Congress labors under the fatal defect that it would empower the federal legislature, by taxing state and municipal bonds, to strike at the very vitals of state credit and state independence.

Governor Hughes is so excellent a lawyer and so great a statesman that his opinion is not lightly to be controverted. But in my judgment it is erroneous in three respects:

(1) His interpretation of the legal force of the amendment is incorrect.

(2) Even were his legal interpretation correct, he fails to take account of economic facts which would prevent the consequences which he fears.

(3) Even were his view correct, that the constitutional amendment would operate to change the law in the direction indicated, there are valid reasons why the law should be so changed and the amendment prevail.

Let us take up each of these points in order.

I

A long series of decisions has established the doctrine that

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there are limitations implied as well as express upon the power of taxation, both of the federal and of the state governments. In the case of McCulloch *v.* Maryland,[1] decided in 1819, it was held that a state tax on the Bank of the United States was unconstitutional. Chief Justice Marshall, in this case, stated:

> That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. . . . The states have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.

A few years later, in 1824, the same proposition was advanced in the case of Osborn *v.* United States Bank.[2] The next step was taken in 1829, when, in the case of Weston *v.* Charleston,[3] a local tax on federal bonds was declared unconstitutional. The court said:

> The tax on government stock is a tax on the contract, a tax on the power to borrow money, on the credit of the United States, and consequently repugnant to the Constitution. . . . The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised and have a sensible influence on the contract. The extent of this influence depends upon the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government.

Again, in 1842, in the case of Dobbins *v.* Commissioners of Erie County,[4] it was held that a local tax was invalid so far as the salaries of federal officers were concerned. And finally, in 1862, in the case of Bank of Commerce *v.* City of New York,[5] it was decided that a state tax on the capital stock of a bank,

[1] 4 Wheaton, 316. [2] 9 Wheaton, 738. [3] 2 Peters, 449.
[4] 16 Peters, 435. [5] 2 Black, 620.

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when such capital stock consisted, in whole or in part, of United States bonds, was unconstitutional.

Beginning at a later period, another series of decisions declared that the federal government was likewise restrained from taxing state operations and agencies. In the case of Collector *v.* Day,[1] decided in 1870, the federal civil-war income tax was held to be unconstitutional so far as it applied to the salaries of state judicial officers. The court said:

It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can only exist at the mercy of that government. Of what avail are these means if another power may tax them at discretion?

In United States *v.* Baltimore and Ohio Railroad Company,[2] decided in 1872, it was held that the United States government cannot tax "the agencies and instruments" of the states. In Mercantile Bank *v.* New York,[3] decided in 1886, which held that a state tax on the shareholders of national banks was valid for special reasons, not necessary here to discuss, it was stated, although indeed *obiter*, that bonds issued by a state, "or under its authority by its public municipal bodies, are means for carrying on the work of government, and are not taxable even by the United States." And finally, in Pollock *v.* Farmers' Loan and Trust Company,[4] decided in 1894, the foregoing dictum was cited with approval, and it was distinctly held that a tax upon incomes from municipal bonds was unconstitutional. The court said:

It was long ago determined that the property and revenues of municipal corporations are not subjects of federal taxation. The same want of

[1] 11 Wallace, 113
[2] 17 Wallace, 322.
[3] 121 U. S. 138.
[4] 157 U. S. 429.

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power to tax the property or revenue of the states or their instrumentalities exists in relation to a tax on the income from their securities.[1]

It is accordingly an established rule of constitutional interpretation that state and municipal bonds are not subject to federal taxation.

The question which now confronts us is: Will the adoption of the proposed amendment change this situation? The amendment states that Congress "shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." What does this mean? It is obvious that the government now has power to levy an income tax; but in attempting to levy such a tax it is met by those provisions of the constitution which declare, first, "that no capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken," and secondly, that "representatives and direct taxes shall be apportioned among the several states according to their respective numbers." If these provisions apply to the taxation of income, they mean that if state A, with the same population as state B, has five times the wealth, the income tax payable by a citizen of state B will be five times as large as that payable by an equally wealthy citizen of state A. So monstrous an inequality would of course prevent Congress from imposing an income tax as a direct tax. To make a federal income tax practicable, it is necessary either to declare it to be an indirect tax—the sole restriction as to which is that it shall be uniform—or expressly to permit the levying of an income tax without apportionment.

For many years the income tax was supposed to be an indirect tax in the sense in which the term is used in the Constitution. Toward the close of the War of 1812 the Committee of Ways and Means brought in a scheme for an income tax, and, had peace not been suddenly declared, the scheme would have been adopted. Many signers of the constitution were still living, and no one raised the objection that the income tax

[1] 157 U. S. pp. 584, 585.

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was direct in the constitutional sense. During the Civil War an income tax was levied, and in the first cases adjudicated it was upheld. Taking each of these cases as decisive only of the precise question before the court, it was settled in Pacific Insurance Company *v.* Soule [1] that a tax on the premiums received by an insurance company is not a direct tax, and in Springer *v.* United States [2] that a tax on the income which an individual derives in part from professional earnings and in part from the interest on bonds is not a direct tax. In the Pollock case, [3] on the other hand, it was decided that a tax on the income from real estate is a direct tax, valid only when apportioned, while a tax on municipal bonds was declared to be, like a tax on the salaries of state officers, entirely invalid for lack of power to impose it.

The Supreme Court of the United States has thus held that certain kinds of income taxes are indirect, that certain other kinds of income taxes are direct, and that still other kinds of income taxes are invalid, irrespective of whether they are direct or indirect. So far as the first two classes are concerned, therefore, the court has stated the law to be that a tax on incomes from certain sources, being direct, can be levied only through apportionment, and that a tax on incomes from other sources, being indirect, can be levied without apportionment. The object of the pending constitutional amendment is simply to remove this discrimination and to make it possible to tax incomes without apportionment, whether the sources of the incomes are regarded as falling within the one category or the other. That is, the amendment declares that an income tax can henceforth be levied without apportionment, no matter what the source may be, *i. e.*, no matter whether the source is one that at present necessitates apportionment or one that at present does not necessitate apportionment. When the amendment states that the government shall have power to levy a tax "on incomes, from whatever source derived, without apportionment," chief emphasis is to be put upon the words "without apportionment."

[1] 7 Wallace, 433 (1868).
[2] 102 U. S. 586 (1880).
[3] 157 U. S. 429 (1894).

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The words "from whatever source derived" are indeed no mere surplusage.[1] On the contrary, their real import is to remove the existing discrimination between the various sources of income, so far as apportionment is concerned, and to put those sources which, under the existing interpretation, can be taxed only through apportionment in the same category as those sources which can now be taxed without apportionment. To say "from whatever source derived" is simply another way of saying "irrespective of the source," or a shorter way of saying "from all sources alike, whether the source be one that previously made apportionment necessary or not." So that the amendment is equivalent to the statement that "Congress shall have power to lay and collect a tax on incomes, whether previously laid by apportionment or not, without apportionment." It is accordingly a mistake to assume that the words "from whatever source derived" give the government the power to tax the income from state or municipal bonds, for such a tax falls within the third category of income taxes mentioned above as being entirely beyond the taxing power of the federal government.

This has been clearly recognized by the Supreme Court. In the Pollock case[2] it was expressly held that the objection to the taxation of municipal bonds was lack of power on the part of the general government to interfere with the operations of state government.[3] When the Pollock case was reheard,[4] the court said, in reference to the grounds of the decision in the original hearing: "As to the income from municipal bonds, that could not be taxed because of want of power to tax the source, and no reference was made to the nature of the tax as being direct or indirect."[5] Both on the original hearing and on the rehearing, dissenting opinions were read, but on the point which we are now considering there was no dissent. Justice White said:

[1] It is here that I venture to differ from the position taken by Senator Root in his letter to Senator Davenport of New York on the income tax. The present article, it may be well to state, was written before the appearance of Senator Root's letter.

[2] 157 U. S. 429.

[3] *Ibid.* pp. 584, 585.

[4] 158 U. S. 601.

[5] *Ibid.* p. 618.

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The decisions of this court, holding that the federal government is without power to tax the agencies of the state government, embrace such bonds [*i. e.*, those of municipal corporations] . . . . Where there is no power to tax for any purpose whatever, no direct or indirect tax can be imposed . . . . The levy, whether direct or indirect, is beyond the taxing power.[1]

Justice Harlan, who concurred with the views expressed by Justice White, added: "It is immaterial to inquire whether the tax [on the income of municipal bonds] is, in its nature or by its operation, a direct or an indirect tax; for the instrumentalities of the states . . . are not subjects of national taxation in any form or for any purpose."[2] And Justice Brown stated that a tax upon the income of municipal bonds was, in his opinion, a "tax upon something which Congress has no right to tax at all, and hence is invalid. Here is a question, not of the method of taxation, but of the power to subject the property to taxation in any form."[3]

It is clear, therefore, that a change in the method of assessing an income tax, from that of apportionment to that of direct levy, cannot make any difference as to the power of the government to tax the income of state or municipal bonds. If the federal government is precluded by the very nature of the constitutional pact, as we are told in Collector *v.* Day,[4] from imposing any tax on state agencies, power to do this will not be conferred upon it by an amendment which simply changes the method of levying a particular kind of tax. What is now non-taxable will remain non-taxable. A change in the method of taxation does not constitute a change in the subject of taxation.

Any other interpretation of the amendment, moreover, would result, in the event of its adoption, in a situation which may well be characterized as absurd. The existing inability of the federal government to tax the property of a state or the instrumentalities of its government will of course continue, for the amendment clearly does not empower Congress to tax property as such. If it were to be held that the amendment gave the federal govern-

[1] 157 U. S. 652.
[2] *Ibid.* p. 654.
[3] 158 U. S. 693.
[4] 11 Wallace, 113.

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ment power to tax the income of state bonds, we should then have the awkward result that the federal government could not tax the bonds themselves but could tax the income from the bonds. Or, to take a still more absurd case, if a state or municipality possessed some revenue-yielding property, like a piece of real estate, it would be competent for the federal government to tax that real estate if it assessed the tax *eo nomine* on the income, while it would be incompetent for the federal government to tax the real estate if the tax were levied on the property as such. In view of the fact that the market value of any piece of property is due only to its present and prospective income, it will readily be perceived in what a maze of contradictions we should be involved by the acceptance of so strained an interpretation of the amendment. When two interpretations of a clause are possible, of which the one is not only, as the Supreme Court has asserted, in direct opposition to the spirit of the Constitution but is also calculated to bring about the most awkward practical situation, while the other is in complete harmony with the trend of judicial decisions and at the same time is likely to obviate all fear of fiscal contradictions or complications, is it not reasonable to assume that the court will prefer the second and more natural interpretation? Such an interpretation is the one which puts the emphasis on the words "without apportionment" and regards the amendment as legalizing a change simply in the method of levying the tax—a change from apportionment to direct assessment.

We are therefore justified in concluding that the essential character of the implied restrictions in the constitution will not be altered one whit by the amendment. State and municipal bonds will henceforth, as before, be exempt from federal taxation, whether the tax be imposed on the property, or whether it be imposed on the income from the property.

II

If now for the sake of argument, it be assumed that the contrary view is legally correct, and that the effect of the proposed constitutional amendment would be to legalize the taxation of state and municipal bonds, it may still be shown that

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the consequences mentioned in the message of Governor Hughes would not follow. We are told that the amendment might "place the borrowing capacity of the state and of its governmental agencies at the mercy of the federal taxing power," and that it might "place such limitations upon the borrowing power of the state as to make the performance of the functions of local government a matter of federal grace."

This opinion, as I hope to show, is erroneous, and the error is traceable to the lack of an adequate economic analysis on the part of the governor—an analysis indeed, which is equally absent from the legal decisions which have misled him. In other words, even if the governor's law be sound, his economic reasoning is unsound, and his final position is still untenable. Let us leave for a time, the whole domain of legal contention and discuss the question of the economic effect of the amendment.

The objection to a tax on governmental securities rests on the presumption that their market value will be affected by the tax. As the Supreme Court said in 1829, in Weston *v.* Charleston[1]:

> The tax on government stock is a tax on the contract, a tax on the power to borrow money, on the credit of the government. . . . The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract.

Of course this sensible influence on the contract can register itself only in the lower market price of the securities. This is the result of the familiar economic principle known as the capitalization or amortization of taxation.

The theory of the capitalization of taxation is, in effect, that when a recurring tax of virtually the same amount is imposed upon the capital or selling value of some durable or permanent property, the selling value of that property will be reduced by a sum equal to the capitalization of the tax.[2] If,

[1] 2 Peters, 449.

[2] The whole subject of the capitalization of taxation is fully treated in Seligman, The Shifting and Incidence of Taxation (3d ed., 1910).

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for instance, the normal rate of interest on securities is five per cent, and a five-percent bond has been selling at par, and if a new tax of one per cent per annum be imposed upon that particular class of securities, the price of the bond will fall from 100 to about 80.[1] The new purchaser of the bond will net only four dollars on the hundred, since he has to pay one dollar in taxes. If, however, he can look forward to a net return of only four dollars, and if the general rate of interest still remains at five per cent, he will naturally pay only eighty dollars for that bond. There is no reason why he should pay more, since he can continue to invest his money in enterprises which are not taxed and which will still net him five per cent. In other words, the annually recurring tax of one per cent will be capitalized into a sum which is automatically deducted from the market value of the securities, thus bringing about an amortization of these securities. At any given time the discrepancy between the taxed and the untaxed securities will be precisely such as to make the net income from each equal the normal rate of interest, and the difference in the market value of the two classes of securities will always be exactly equal to the capitalization of the tax.

The influence of tax exemption is the very reverse of that exercized by taxation. If all securities have hitherto been subject to taxation, and if one particular class of securities be suddenly

[1] As a matter of fact, whether the price of the security upon which the new tax is imposed will fall exactly to 80 depends very largely upon the amount of these securities, compared with the total amount of capital in the country. If the amount of these newly taxable securities is comparatively large, the price will not fall quite to 80, but perhaps only to 81; for the imposition of a tax on so large a part of the outstanding capital of the country will probably have an influence, even though slight, on the general rate of interest and may reduce that general rate from five per cent to perhaps four and seven-eighths or four and fifteen-sixteenths. If a large amount of capital is transferred from these newly taxed bonds to other securities, the increasing demand for these other securities, previously selling at par, will enhance their price to a little above par. As, however, the net return on these other securities remains at five dollars, this is equivalent to saying that the rate of interest on the investment will now be a little below five per cent. If the general rate of interest falls to a little below five per cent, the market value of the taxed securities will now be a little over 80. If, as is usually the case, the taxed security forms only an insignificant part of the whole amount of capital, the influence on the general rate of interest will be inappreciable, and the price of the security will fall to 80.

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exempted, the value of these tax-exempt securities will rise by an amount equivalent to the capitalization of tax. If five-per-cent bonds which, like all other forms of capital that are subject to a tax of one per cent, sell at par, it means that the normal rate of interest is four per cent, since investors net four dollars on every hundred dollars. If this particular class of bonds be now exempted from taxation, the price of the bonds will appreciate to 125, since five dollars bear the same relation to $125 as four dollars do to $100. Thus, whatever way we look at it, taxation will diminish the market value of bonds just as exemption will increase their market value.

Where an annual tax is actually enforced, and where other conditions remain the same, the difference between taxable and non-taxable securities is indeed precisely in accord with the capitalization theory.[1] In the United States, however, the influence of taxation is sensibly modified by prevailing conditions, and the discrepancy between taxable and non-taxable bonds is far less than might be expected. The rate of the local property tax varies in the United States from one and one half per cent to over two per cent. Let us take two per cent as the normal figure. Let us also assume that the current rate of interest is four per cent, so that four-percent bonds will sell at about par. If there were no property tax, and if these bonds were now subjected to the two-percent tax, they would manifestly fall to 50, since one-half of their yield would be eaten up by the tax. If, on the other hand, we take the actual law under which all property is taxable at the rate of two per cent, then if the four-percent bonds were exempted from taxation their price on the market ought to rise from par to 200; for instead of the holder netting two dollars on each one hundred dollars (four dollars interest minus two dollars tax), he would now net four

[1] An excellent illustration is found in the mortgage bonds of the Northern Railway in France, part of which are issued on its French line and part on the Belgian stretch, although the security is the same in both. In the case of the bonds on the French stretch, however, a special tax is imposed and levied up to the hilt by the French government. In the case of the securities on the Belgian stretch there is no such tax. The difference in the market price of the bonds, on the Paris stock exchange, is exactly equivalent to a capitalization of the French tax. *Cf.* Edgar Milhaud, L'Imposition de la rente (1908), pp. 29, 30.

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dollars, or double the amount. A doubling of the income, however, would involve a doubling of the market value.

As a matter of fact, the disparity between taxable and tax-exempt securities in our American states falls far short of reaching this point. This is true not only of exemption from a special tax but, and in still larger measure, of exemption from a general tax. A good example of the influence of a special exemption is afforded by the New York state canal bonds.[1] When these bonds were authorized, to provide for the enlargement of the Erie canal, the constitutional amendment limited the rate of interest to three per cent. By the time that it had become necessary to issue the bonds, the market had fallen to such a point that they were not salable, and in order to change the rate another constitutional amendment became necessary. To arrange for the state finances in the interval, a law was passed granting to the three-percent bonds a special exemption of one per cent, to be applied against the franchise tax of similar amount, payable by savings banks, trust companies and insurance companies. The three-percents, as a result, sold around a 2.90-percent basis, and the four-percents around a 3.45-percent basis. Even here, therefore, the difference in the price of the bonds was only about one-half of the capitalization of the tax.

The case of general exemption is illustrated in Massachusetts. In that state all municipal bonds issued after May 1, 1908, are exempt from taxation. The old taxable three-and-one-half-percent Boston bonds sold in 1910 in Massachusetts on about a 3.80-percent basis, the new tax-exempt bonds sold on about a 3.40-percent basis, *i. e.* at 101.83 as compared with 94.76. The tax rate was about 1.65, almost one-half of the income of the bonds. In other words, a tax exemption of almost fifty per cent of income made a difference of only seven per cent in selling value. Even this difference, moreover, is largely due to the fact that the chief purchasers of Boston bonds are the Massachusetts savings banks, which are subject to a fixed tax of one-

[1] For many of the facts in this section I am indebted to the courtesy of Mr. McKee, of Messrs. N. W. Harris and Company, of New York City, one of the largest American houses dealing in state municipal securities.

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half of one per cent—a tax that is collected with comparative efficiency.

Where the bonds command a wider market, the influence of tax exemption is naturally far less marked, because the exemption applies only within the state. In Pennsylvania, for instance, bonds are subject to a tax of four mills on the dollar, and some corporations and municipalities pay the tax without deducting it from the interest. In the case of the smaller municipalities, whose bonds are sold only locally or within the state, this tax produces a difference in price between taxable and tax-exempt bonds, but a difference that is far less than a capitalization of the tax. In the larger cities, however, like Philadelphia, Pittsburg and Scranton, where the bonds are a legal investment for New York savings banks and thus reach a wider market, the difference in value is exceedingly slight. A bond which sells on a 3.90-percent basis, tax-exempt, would in such cases, if taxable, sell only on about a four-percent basis. In the case of general corporate securities which have a still wider market, the difference due to tax exemption is almost inappreciable. A taxable security selling at 100 will frequently compare with a tax-exempt security at 102 or 103—a difference which, when spread over the years prior to the maturity of the bond, represents only the merest fraction of the four-mills tax.

In most of the states, however, the tax rate is not four mills, as in Pennsylvania, but, as stated above, from one and one-half to two per cent. Even where a serious attempt is made to enforce the personal property tax, as in Ohio, with its tax-inquisitor law, the only result is that tax-exempt bonds—Cincinnati bonds, for instance—sell on a 3.80-percent basis in the local market, while in the general outside market they would sell at a lower price—namely on a 3.90 or 3.95-percent basis. The actual tax, or the risk of taxation of two per cent, hence means a difference of only a few points in the value of the securities.

Even within the area of tax exemption, the larger the amount of the tax-exempt securities, the smaller will be the difference in value between them and the taxable securities. In New York, for instance, so long as tax-exempt bonds were rare,

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they commanded somewhat of a premium: the New York City two-and-one-half-percent bonds at one time sold above par, because they were much sought after by trustees of trust estates who were desirous of escaping the burdensome local tax. Since 1908, however, all municipal bonds are exempt from general taxation throughout the state; and the result has been a progressive disappearance of the difference in price between taxable and tax-exempt bonds. Of course two other factors have been coöperating; the one, that the market in New York city bonds now transcends the capacity of New York city investors; the other, that the assessment of taxable securities in the hands of individuals, under the local general property tax, is becoming even more infrequent than it was formerly. Undoubtedly, however, the chief factor in the progressive elimination of the premium on tax-exempt bonds is the increase in their quantity. It is instructive to note how, through the inevitable operation of economic law, the very multiplication of tax-exempt state and municipal bonds is gradually defeating the object of the exemption. The greater the area of tax exemption, the less does its influence become.

It appears, accordingly, that, under present American conditions, exemption from a tax which in some cases amounts, nominally, to twenty-five or even fifty per cent of the income of the bonds actually makes no difference in their market value, or a difference so slight as to be negligible. This at least is the result of the exemption of state and municipal bonds from the general property tax, as levied in the American states. Let us now consider the bearing of this fact upon the results to be anticipated from the imposition of a federal income tax.

The income tax contemplated by the constitutional amendment is very different from the general property tax. A general property tax of two per cent is, we have seen, equivalent to a fifty per cent income tax, if the prevailing rate of interest is four per cent. The federal income tax of 1894 provided for a tax, not of fifty per cent, but of two per cent. If a tax of fifty per cent makes, as we have seen, virtually no difference, what significance can we ascribe to a tax of two per cent? Even if we assume that a federal income tax will be more ef-

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fectively enforced than a state general property tax, the margin is still so enormous as to rob the income tax of much of its supposed danger. The practical effect of subjecting the income of state or municipal bonds to federal taxation would be so slight as to render the tax virtually innocuous.

We come now, however, to the central point of the argument. In the entire preceding discussion we have assumed the existence of an exclusive tax or of a special exemption. The theory of capitalization or amortization applies only in such cases. If a special tax is permanently imposed on a class of property, it can be capitalized, because of the existence of a taxless field to which the taxpayer can repair and in which he can invest his money. If a special class of property is exempt from taxation, the influence will be felt only because the exemption applies to it alone, and not to other classes of property. But if the tax applies to all classes of property alike, there can be no amortization; and if the exemption applies to all classes alike, there can be no capitalization. The very basis of the theory is the exclusiveness or uniqueness of the proceeding. When a tax is a general tax and not an exclusive tax, the theory ceases to apply.

Now the income tax contemplated by the amendment is not a special tax but a general tax. By the very terms of the amendment, it applies to all kinds of income from whatever source derived. This is the true purpose of the measure. It is conceded that if a special tax were imposed *eo nomine* on state and municipal bonds, it would, theoretically at least, have some influence on their market value, although, as we have seen, the practical effect of such a tax would be less than might be expected. But if incomes derived from state bonds are taxed at the same rate as incomes from other bonds, how can the tax have any influence on their value? There is no taxless field to which the bondholder can repair if he seeks to make a different investment. In whatever kind of property he puts his capital, his income will be equally diminished by the tax. But if all incomes are equally diminished, there can be no change brought about in the relative superiority or inferiority of the

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different sources of income. If five-percent government bonds are selling at par, and if a general income tax of one per cent is imposed on all incomes, the price of government bonds as compared with other securities in general will not be affected one iota. We may go further and say that there will be no change at all in the actual values of any securities, unless the tax is so high as to cause a perceptible exodus of capital to foreign countries, with a resulting slight change in the domestic rate of interest, which change in the rate of interest would, of course, reflect itself in the market values of the securities.

The ordinary view is to be traced to the adoption by the Supreme Court of what it mistakenly conceived to be the opinion of Chief Justice Marshall. In explaining the decision of the court in Weston *v.* Charleston, Chief Justice Marshall said: "The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised and have a sensible influence on the contract." And again: "To any extent, however inconsiderable, it is a burthen on the operations of government." This reasoning, in these very terms, was applied in the Pollock case to the federal income tax. It is evident, however, that this application is erroneous; for if the tax is a part of a general income tax there can be no capitalization and no change in the value of the bonds, and hence it cannot "operate on the power to borrow" and cannot "be a burthen on the operations of government." Marshall's statement was justified, in the case which he had before him, for two reasons: first, because the tax in question was, in part at least, *eo nomine* on government bonds, and secondly, because it was a state tax on federal securities. In the Pollock case, however, not only was the court discussing a federal tax on state bonds, but the tax in question was a general tax. Passing over, for the moment, the distinction between a state tax on federal securities and a federal tax on state securities, which will be treated below, the difference between a special tax and a general tax is in itself sufficient to show that Marshall's reasoning does not apply to the Pollock case. In this latter case, the failure of the court to estimate the inexorable operation of economic law led it astray; and implicit reliance on the

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economic views of our later jurists has misled so eminent a statesman as Governor Hughes.

We may accord the fullest authority to the legal reasoning of the Supreme Court; but when a legal conclusion is based on an economic argument which is plainly fallacious, it is time to call a halt. In this instance the economic reasoning of the Supreme Court is so obviously defective that it invalidates the entire conclusion. A specific and exclusive tax on state bonds would indeed have the consequences ascribed to it by the court; a general tax could not possibly have those consequences. A tax on the income of state or municipal bonds as a part of a general income tax would leave everything as it was before the tax. If the operations of state governments were previously not burthened, they would not be burthened by such a tax. If the power of the state to contract was not affected before the imposition of the tax, it would not be affected by the imposition of the tax. The economic situation would be unchanged.

It may be claimed, however, that, even if the preceding argument is valid and even though state and municipal bonds will not suffer in price by being subjected to a general income tax, a special exemption of state and municipal bonds from taxation will enhance their price. Therefore a failure to exempt them might be regarded as virtually tantamount to an attack on the state's credit. This claim is specious, but it is not valid.

In the first place, the actual enhancement of prices due to special exemption will be far less than is usually imagined; for not only will an income tax or an exemption from such a tax have, as pointed out above, no significant influence on the capital value of the security, but the mere fact of the general exemption of all state and municipal bonds would, in itself, tend to minimize even this slight influence. The exemption of the bonds of a particular municipality might well be expected to exert an influence on their price. But in proportion as other municipal bonds in the state, and state and local securities in other states, come to enjoy the same privilege, the advantage would tend to be neutralized. If the exemption were to apply to all state and local bonds, amounting to many hundreds, or

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perhaps in the near future even thousands, of millions of dollars, we should see the same development which, as explained above, has actually worn away the original advantage attaching to the tax-exempt bonds of New York City. The broader the exemption area, the less the value of the exemption.

The argument that tax exemption is especially needed in times of crisis is thus robbed of most of its force; for if tax exemption has little value under normal conditions, it can have no great value in times of crisis. At such times, indeed, it will have no value; for in crises bonds are almost completely unsalable. The drop in their price is so great that the question of their taxation or exemption becomes immaterial.

It may be urged, further, that even if the exemption of state securities from a federal income tax were of real advantage to the states, there seems to be no reason why the federal government should confer upon them this advantage. The constitutional inhibition, if it means anything, means only that the national government shall not discriminate against the states by injuring their power to borrow. It does not mean that the national government should discriminate in favor of the states by enhancing their power to borrow. A special exemption of state bonds from a general income tax would, if it increased the market price of these securities, be tantamount to a gift from the national government to the state government. Such a relation, however, is not contemplated by the Constitution. It is not the function or the province of the national government to confer gifts or favors upon the state governments. The states can look after themselves, and all that they have a right to ask from the national government is that there shall be no unconstitutional interference with their powers. Equality under the Constitution they have a right to claim; special favors they have no right to demand.

Moreover, such an exemption of state and municipal bonds would be inconvenient to the national government and unjust to the individual citizen. Federal securities have at times been taxed by the federal government. It may again become desirable that they shall be so taxed; all the important European countries now find it on the whole advisable to

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tax their own securities. If the bonds of the United States were taxed under a general income-tax law, and if at the same time state and municipal bonds were exempt, it will be readily seen that this would in effect be subordinating the credit of the United Stares to that of the local divisions. Such a contingency can be contemplated only with apprehension. Of still greater importance is the consideration that, if state and local bonds were especially exempt as over against the whole mass of private and corporate securities, the individual citizen would have a just cause for complaint. Not only would it mean an escape from taxation for all those who chose to invest in state or local bonds, but, if the advantage were at all appreciable, the increasing demand for these state and local bonds would mean such a transfer of investments as to cause a sensible depreciation in the market value of other securities, and the unfortunate possessors of those other securities would have to suffer a loss, the corresponding gain accruing to the happy possessors of the tax-exempt state and local bonds.

Thus, from every point of view, the special exemption of state bonds from a general income tax is indefensible. It would in all likelihood not accomplish the object which it is designed to attain; but in so far as it did accomplish this object, it would create a glaring inequality, inimical alike to the maintenance of the national credit and to the interests of the mass of the individual taxpayers.

III

We come now to the final consideration. Even if it were true, as it is not, that the proposed constitutional amendment empowers the national government to tax the income of state bonds, there are valid reasons to justify such a change in the law. Even if the amendment may be so interpreted as to give the federal government this new power, it ought still to prevail.

On what ground, however, it may be asked, can we defend the immunity of national bonds from state taxation, and at the same time uphold the possible legitimacy of the federal taxation of state bonds? Does not the same principle, the independence of each government within its own sphere, apply in both cases? Let us look into this question.

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If we examine the successive legal decisions on the subject, we shall find that there have been three stages in the development of the doctrine that the states may not tax the agencies of federal government. In the case of McCulloch *v.* Maryland, in 1819, the objection was to a special and exclusive state tax on an agency of the federal government; for the tax in question was levied on "all banks, or branches thereof, in the state of Maryland, not chartered by the legislature," and the only bank at that time fitting the description was the Bank of the United States. In the case of Weston *v.* Charleston, in 1829, the second step was taken by declaring unconstitutional a state or local tax which was indeed not exclusively levied on the instrumentalities of the national government, but which specifically and by name included federal bonds in a list of taxable securities. The third and final stage was reached in the case of Dobbins *v.* Commissioners of Erie County, decided in 1842, in which it was held that a local tax, entirely general in character and making no special mention of government salaries, was nevertheless invalid so far as it affected the salaries of federal officers. And in the same way, a few decades later, in 1862, it was decided in Bank of Commerce *v.* New York City that a state tax on federal bonds was unconstitutional even if the tax were entirely general in character and did not mention federal bonds at all. Thus we have a gradual evolution of the doctrine, from the initial stage of exclusive taxation through that of specific mention to the final stage of general taxation.

On the other hand, in the reverse case of the attempt of the federal government to tax state agencies, there was no such gradual evolution of the doctrine. The theory which had reached its complete formulation in 1842 and in 1862, with reference to state taxation of federal agencies, was now, in 1870, taken over bodily to apply to the federal taxation of state agencies. In the case of Collector *v.* Day it was decided that a general federal income tax was unconstitutional so far as the salaries of state judicial officers were concerned, even though they were not at all specifically mentioned in the law. And in the Pollock case this reasoning was applied to a general federal income tax so far as it reached the income of municipal bonds.

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On what grounds, now, can we justify the rule of non-interference with agencies of government in the first set of cases and withhold our approval from its application to the second set of cases? It may at once be conceded that a tax on the agencies of state government which really impairs the operations of state government would be just as obnoxious to the Constitution as a similar state tax on federal agencies. It may further be conceded that a special federal tax on state bonds or on the income of state bonds would be just as indefensible as a similar state tax on federal bonds. The question at issue, however, is a different one—it is whether the taxation of federal bonds under a general state tax law is to be put in the same category as the taxation of state bonds under a general federal tax law. In my opinion the two cases are not on a par, and for the two following reasons, the one political, the other economic.

The political ground on which a distinction may be drawn between the two cases is this: A state legislature may frequently find it in the interest of the state to follow a policy which is different from that of other states, and which may even be distinctly opposed to that followed in federal legislation. The states, acting through their legislatures, may regard only their peculiar narrow interests and may consider them superior to those of the country as a whole. On the other hand, Congress is composed of representatives from all the states, and in the Senate, in particular, equal voice is given to the wishes of each state. There is hence no likelihood of a federal tax law interfering with the states, except where it is the well-considered opinion of a majority of all the states that the interests of any particular state ought to be subordinated to the welfare of the whole. In other words, while the federal government would, without the restrictions which the Supreme Court has read into the Constitution, have no protection against hostile action on the part of state legislatures, the state goverments have, from the very nature of the case, a far greater measure of protection against the acts of Congress.

It must, moreover, not be overlooked that all sound constitional interpretation should keep pace with the changing needs of political and social life. The conditions which existed when

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the constitution was framed are no longer existent. At that time the political and economic interests of the separate states were so distinct and the sense of state sovereignty was so strong that it was only with extreme difficulty that a federal government was established at all. During the last century, however, the development of the underlying economic and social forces has created a nation, and this development calls for uniform national regulation of many matters which were not dreamed of by the founders. In all the federal states which have been created during the nineteenth century, under the influence of these newer economic forces, in Canada, in Germany, in Australia and in South Africa, we find no such problems as those which vex us, because of the greater authority initially granted to the central government. In Canada, for instance, we find just the reverse of our system. With us all powers not expressly conferred upon the federal government are reserved to the states or to the people; in Canada the powers not expressly conferred on the states or provinces are reserved to the federal government. It is idle to say that this centralization of powers, where centralization is needed, is injurious either to democracy or to self-government. There is at least as much true democracy and as much real self-government in Canada and in Australia as there is in the United States. Let us not make a fetich of "self-government," and let us not oppose central authority in those cases where self-government means retrogression rather than progress.

The Supreme Court of the United States has already been influenced by these considerations. In the case of Veazie Bank *v.* Fenno[1] it was held that a federal tax on state bank notes was valid, because of the necessity of upholding a national system of currency. In the recent and very important case of South Carolina *v.* United States[2] it was held that a federal tax on a state dispensary was constitutional. On the other hand it is certain that the Supreme Court would never uphold the validity, without the express consent of Congress, either of a state tax on national bank notes or of a state tax on a federal

[1] 8 Wallace, 533 (1870). [2] 199 U. S. 437 (1905).

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business or a federal monopoly. In other words, we are gradually working out, in detail, the distinction that Marshall formulated many years ago in McCulloch *v.* Maryland: "The difference is that which always exists and always must exist between the action of the whole on a part and the action of a part on the whole." Sooner or later it will be realized that this distinction applies also as between a state tax on federal bonds and a federal tax on state bonds. Sooner or later we shall outgrow many of the notions of extreme individualism and of exaggerated state rights which dominated the country at the time of the formation of the Constitution. They are bound to disappear in the United States as they have disappeared in every other great federal republic.

If this political argument does not appeal to those who are still enmeshed in the web of extreme individualism and exaggerated state rights, there remains another argument of an economic character which is of decisive importance. Even though we assume that from the political point of view no distinction ought to be made in the matter of taxation between the state and the national government, it is susceptible of proof that valid economic reasons will justify the distinction between a general state tax on federal bonds and a general federal tax on state bonds. The general state tax to which allusion is made is the general property tax. The general federal tax to which allusion is made is the general income tax. Now a state tax on government bonds, as part of a general property tax, not only is unconstitutional but ought always to remain unconstitutional. State A, which imposes the tax in question, would of course, from the very nature of the case, tax all other monied capital as well as the capital invested in federal bonds. But its neighbor state B might see fit not to impose a general property tax. There are several states in the Union which today do not impose a general property tax. Or, even if state B imposed a general property tax, its methods of assessment might be so lax that it would not reach all other monied capital. Consequently, if state A included government bonds in its taxable general property and actually assessed the bonds, the bonds would undoubtedly be affected in value through the lack of uni-

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formity in the various states. The power of the general government to borrow money might thus be seriously impaired, and this risk would, beyond cavil, constitute a sufficient reason for withholding the power from the states. On the other hand, if the federal government were to impose a general income tax which, under the very terms of the Constitution, must necessarily be uniform[1] throughout the country, the income from state bonds would be reached in precisely the same way as the income from all other monied capital, and, as I have abundantly shown above, there would be no alteration in the value of the bonds and therefore no influence exerted on the power of the states to borrow.

The Supreme Court of the United States went off on a wrong tack, not in the case of Dobbins *v.* Commissioners in 1842, but in the case of Collector *v.* Day in 1870. The cases, from the economic point of view, were not on a parity. Had Collector *v.* Day presented a situation like that in McCulloch *v.* Maryland, *i. e.*, had it been a question of an exclusive federal tax comparable to the exclusive state tax, the economic basis of the argument would have been the same. But when Collector *v.*

[1] It might be claimed that there will be no assurance of uniformity, for the constitutional provision as to uniformity specifically applies only to "all duties, imposts and excises." Since the amendment, while changing the method of levying the income tax, in so far as it has been held to be a direct tax, leaves unaltered its nature or appellation as a direct tax, it might be contended that the income tax as a direct tax is not necessarily subject to the constitutional inhibition as to uniformity.

This contention, however, is clearly erroneous. The Constitution gives a double classification of taxes—one according to their nature, the other according to the mode of levy. According to their nature, taxes are divided into the four classes of direct taxes, duties, imposts and excises. According to the mode of levy, however, taxes are divided into two classes only—those subject to the rule of apportionment and those subject to the rule of uniformity. If, now, the income tax is by constitutional amendment taken out of the first category, it necessarily falls into the second. There is no third category into which it could fall. To assume that an income tax could be levied without uniformity would be to make of the tax neither fish nor flesh —to keep it, as it were, suspended in mid-air between the two solid posts of apportionment and uniformity. These are the only methods contemplated by the Constitution. Every tax, no matter what its application, must be levied in one of these two ways. If the one way is barred by the constitutional amendment, it must necessarily be levied in the other way. To assume that under the amendment we could have anything but a uniform income tax would be to do violence to every rule of constitutional construction.

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Day attempted to apply by inversion Dobbins *v.* Commissioners—when, in other words, a general federal tax was declared equivalent to a general state tax—the judges were misled by a superficial analogy which had no basis in economic fact. In the same way the Supreme Court erred when, in deciding the first Pollock case, it thought that it was applying the principle involved in Weston *v.* Charleston. Weston *v.* Charleston dealt with a state tax on federal securities; the Pollock case involved the question of a federal tax on state securities. As we have seen, the economic conclusions which apply in the one case do not apply in the other.

In the long run, however, the economic interests of a community must prevail; for law is nothing but the crystallization of economic and social imperatives. Sooner or later, therefore, the underlying fallacy in the more recent decisions of the Supreme Court will be recognized by the court itself, or the mistake will be corrected by constitutional amendment. The law cannot permanently lag behind the economic truth.

Entirely apart therefore from any legal or political considerations that might be invoked, an economic analysis shows clearly that the inclusion of state bonds under a general federal tax is a very different thing from the inclusion of federal bonds under a general state tax. Since the economic results are or may be so entirely different, the legitimacy of the action of the respective governments is entirely different. From the economic point of view the states ought not to have the right to tax the bonds of the federal government at all; but the federal government might well be justified in including state bonds in a general income tax. Hence, even if the constitutional amendment were to have the legal consequences which are predicated of it, it ought still to prevail, in order to subserve the best economic interests of the whole country.

IV

In order thoroughly to discuss all the problems raised by the constitutional amendment it would be necessary to go at some length into two further problems: first, to what extent is the taxation of government securities advisable, even by the power

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that issues them? and secondly, how far is the general scheme of an income tax in itself to be welcomed? These matters, however, would lead us too far astray, and they have, strictly speaking, only an indirect connection with the specific questions that are raised by the amendment. It may be stated, however, that in so far as the question of the taxation of government bonds is concerned, there are good arguments on both sides, and that this question finally resolves itself into a choice between upholding the credit of the government and maintaining exact impartiality as between individual taxpayers. Most of the European countries, after a long period of wavering, have now come to the conclusion that the exemption of government securities from the income tax is on the whole inadvisable, and they are willing to subordinate the slight advantages which would accrue to the borrowing power of the government to what they conceive to be the far greater benefit of complete uniformity and equality as among the various classes of taxpayers. The tendency throughout the civilized world is away from, and not in the direction of, the exemption of government securities.

So far as the problem of a general income tax is concerned, there is perhaps less room for discussion. Many thoughtful citizens, indeed, may still have their doubts as to the practicability of an income tax and as to the possibility of the United States government creating a really successful income-tax measure. But all these doubts must fade away when the question is presented in all its baldness: "Shall the government of the United States be precluded from even making the attempt to levy an income tax?" To deny to a great empire like the United States the possibility of utilizing so powerful a fiscal engine in times of national stress would be almost equivalent to advocating national suicide. At all events, it amounts to a deliberate decision to put the national government at an enormous disadvantage at the very times when no possible advantage can safely be neglected. To withhold from the government of the United States a power which is possessed by the smallest of its competitors would be a monstrous folly.

Whether an income tax is a desirable supplement to the

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ordinary tax system of the United States in times of peace is a far-reaching question which need not be discussed in this place. That, after all, is a matter for the legally constituted representatives of the nation to determine. But surely no patriot can afford to object to conferring upon the United States a power which until recently it was always supposed to possess, and without which its prosperity—nay, even, its very existence—might possibly be menaced. The pending constitutional amendment seeks to secure this result, and its adoption ought not to be impeded by arguments that place upon it an erroneous interpretation and conjure up dangers which a more careful economic analysis shows to be wholly non-existent. The pending constitutional amendment is not only legally defensible and politically innocuous, but it is, above all, economically sound. It is therefore from every point of view eminently desirable.

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THE POWER OF CONGRESS TO REGULATE COMMERCE

IN the early history of the United States practically all the commerce of the country, both foreign and between the several states, was carried on by water. Naturally, then, the commerce which Congress first attempted to regulate, under article 1, section 8, clause 3 of the Constitution, was navigation, which was held by the Supreme Court to be included within commerce.[1] At first, apparently, it was believed that, in so far as Congress did not regulate commerce, the states had the right to regulate it.[2] Later, it was held that the power of the states was limited to that part of commerce which in the opinion of the Supreme Court did not admit of uniform regulation[3]; and that, in so far as Congress refrained from regulating that part of commerce which was susceptible of uniform regulation, its inaction indicated an intention that commerce should be unregulated and therefore free.[4]

The early cases were thus decided with reference to navigation. The immediately succeeding cases, however, were decided with reference, not to navigation, but to commerce on land, and they interpreted not so much the power of regulation possessed by Congress as the power still possessed by the states. In de-

[1] Gibbons *v.* Ogden, 9 Wheaton, 1 (1824). In reaching this decision the court was influenced by the fact that Congress had already assumed the right to regulate navigation. Chief Justice Marshall in giving the opinion of the court, said: "If commerce does not include navigation, the government of the Union has no direct power over the subject, and can make no law prescribing what shall constitute American vessels or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands and has uniformly understood the word 'commerce' to comprehend navigation. It was so understood and must have been so understood when the Constitution was framed."

[2] License Cases, 5 Howard, 504 (1847).

[3] Cooley *v.* Board, 12 Howard, 299 (1851).

[4] Henderson *v.* Mayor, 92 U. S. 259; Robbins *v.* Shelby County Taxing District, 120 U. S. 489.

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ciding this class of cases, the Supreme Court held that a number of matters not only not connected with navigation but not even connected with transportation, such as sales, were included within the term commerce.

Our conceptions of the nature and extent of the power of Congress to regulate commerce have thus been derived from the decisions of the Supreme Court, first, as to navigation, second, as to land commerce which the states may not regulate because it is a part of foreign or interstate commerce. Only comparatively recently in our history has Congress attempted to regulate commerce which is not navigation; and only after Congress had begun to do this could the question arise, whether the conceptions derived from a consideration of commerce which is at the same time navigation are applicable to commerce which is not navigation. While we are unquestionably aided in reaching a decision of this question by a consideration of the decisions relative to the powers of the states, it must always be borne in mind that the recognition of powers in the states over commerce is coupled with the assumption that state regulations of foreign and interstate commerce are valid only where they are local in character and are not in conflict with any action which Congress may have taken.

I. *The power of Congress to regulate navigation*

What now has been the attitude of the Supreme Court as to the power of Congress to regulate foreign and interstate navigation? In order to answer this question we must ascertain what is meant, first, by navigation, second, by foreign and interstate navigation, and third, by regulation.

What is meant, now, by navigation? In the early history of the country, *e. g.*, in 1825, the only waters which were considered navigable from a legal point of view were waters in which the tide ebbed and flowed.[1] Later on, in 1851, this decision was reversed; and in The Propeller Genesee Chief *v.* Fitzhugh[2] and in The Steamboat Magnolia[3] the conception of navigable

[1] The Thomas Jefferson, 10 Wheaton, 428 (1825), followed in the Steamboat Orleans *v.* Phoebus, 11 Peters, 175.

[2] 12 Howard, 443.

[3] 20 Howard, 296.

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waters was extended so as to include the great lakes and the waters of rivers totally within the limits of a state—waters which, though connected with the sea, were unaffected by the ebb and flow of the tide. In 1903 the conception was still further extended so as to include the Erie Canal, an artificial waterway constructed by one of the states and entirely within its limits but connecting the navigable waters of Lake Erie with the ocean.[1]

All these cases, it is to be remembered, were decided not in interpreting the power of Congress to regulate commerce but in reaching a determination as to the extent of the admiralty jurisdiction of the United States courts. They are not therefore authorities upon the question, what are the navigable waters of the United States from the viewpoint of the power of Congress to regulate navigation.[2] But the Supreme Court has in a number of cases expressed the opinion that the criterion of the navigability of waters is the same from the viewpoint of the admiralty jurisdiction of the courts and as regards the navigation which Congress has the exclusive power to regulate. Thus in The Daniel Ball[3] it was held that a river wholly within the limits of one state but emptying into Lake Michigan was a navigable water subject to the regulation of Congress.[4] Furthermore, while many early cases decided that a state might permit within its own limits an obstruction in a navigable river (*i. e.*, a river in which navigation was possible and which connected with navigable waters) where Congress had taken no action with regard to the matter,[5] the state regulation of such waters is now regarded as inexpedient, and the whole matter has been regu-

[1] The Robert W. Parsons, 191 U. S. 17. *Cf.* also Simmons *v.* The Jefferson, 30 Supreme Court Reporter, 54, in which it is held that the admiralty jurisdiction extends to a "libel claiming salvage for services rendered by tugs in subduing a fire communicated from the shore to a vessel undergoing repairs in a dry dock from which all water had been emptied."

[2] *Cf.* the remarks of Chief Justice Taney in The Genesee Chief, 12 Howard, 443, 452.

[3] 10 Wallace, 557.

[4] *Cf.* also *ex parte* Garnett, 141 U. S. 1, 12.

[5] *Cf.* Escanaba Company *v.* Chicago, 107 U. S. 678.

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lated by Congressional legislation passed in 1890, which prohibits "the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters in respect to which the United States has jurisdiction." This law has been interpreted as preventing not merely the placing of an obstruction, such as a dam or a bridge, but also the diversion of water so as to interfere with the navigability of navigable waters.[1]

We may therefore say that the United States Congress has jurisdiction over all waters over which navigation with foreign countries or between two states is possible and, probably, only over such waters.[2] This being the case, a state may not, even in the absence of action by Congress, regulate this navigation[3] except as to purely local matters, such as pilotage,[4] quarantine,[5] port regulations[6] and wharfage.[7] Nor may it exclude from the privilege of navigating such waters any vessel authorized by the United States to use them,[8] even if they are entirely within the state's limits.[9]

The cases which have been referred to partly answer the question, what is foreign or interstate commerce? Thus in The Daniel Ball navigation upon a navigable water of the United States, where the navigation was limited to two places within the same state, was held to be subject to the regulatory power of Congress.[10]

[1] U. S. *v.* Rio Grande Dam and Irrigation Company, 174 U. S. 690.

[2] *Cf.* Leovy *v.* United States, 177 U. S. 621.

[3] Gibbons *v.* Ogden, 9 Wheaton, 1. [4] Cooley *v.* Board, 12 Howard, 299.

[5] Morgan's Steamship Company *v.* Louisiana Board of Health, 118 U. S. 455.

[6] The Brig James Gray *v.* The Ship John Fraser, 21 Howard, 184.

[7] Packet Company *v.* Catlettsburg, 105 U. S. 559. [8] Gibbons *v.* Ogden, *supra*.

[9] Harman *v.* Chicago, 147 U. S. 396; Moran *v.* New Orleans, 112 U. S. 69.

[10] *Cf.* Lord *v.* Steamship Company, 102 U. S. 541, in which navigation over the Pacific Ocean between the ports of San Francisco and San Diego, both in the state of California, was held to be subject to the regulation of Congress; and Steamboat Company *v.* Livingston, 3 Cowen, 713, in which boats plying between two places in the same state were held to be subject to the power of Congress. *Cf.* also United States *v.* Ferry Company, 21 Fed. Rep. 331, and The Steamboat Sunswick, 6 Benedict, 112. *Cf.* also State Tonnage Tax Cases, 12 Wallace, 204, which held that the states may not impose tonnage taxes on vessels plying between two ports of the same state, since such vessels, if plying the navigable waters of the United States, are enrolled and licensed by Congress.

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Some of the cases referred to also help us in the determination of the meaning of the power to regulate, certainly so far as it is exercised with regard to navigation.

In the first place, we may say that the power to regulate includes the power to prohibit. Thus Congress has, without objection and for many years, prohibited all vessels not of American registry from engaging in the coasting trade of the United States. The constitutionality of such action has not been questioned and is implied in the decision of the case of The Daniel Ball. Furthermore the recognition of the constitutionality of the Embargo Act[1] proves that regulation includes prohibition.

In the second place, the power to regulate includes the power to license, and Congress has, from an early period, required a license from all vessels engaged in the navigation of the navigable waters of the United States. Its action in this respect was approved by the Supreme Court in the case of The Daniel Ball, already referred to, where a libel was upheld against a vessel to recover a penalty for the use of the vessel on the navigable waters of the United States without the license required by act of Congress.[2]

In the third place, Congress has the right to regulate the contractual relations of persons and corporations engaged in navigation. As early as 1790 Congress passed an act providing for the apprehension of deserters and their delivery on board the vessel from which they had deserted. In 1872 such desertion from a vessel was punished by forfeiture of wages and by imprisonment. In this act and the amendments thereto careful provision was made for the protection of seamen engaged in foreign commerce against the frauds and cruelty of masters, the devices of boarding-house keepers and, as far as possible, against the consequences of their own ignorance and improvidence. This legislation was declared to be constitutional as an

[1] United States *v.* The William, 2 *American Law Journal*, 255; approved in Pennsylvania *v.* Wheeling *etc.* Bridge Company, 18 Howard, 421, 439.

[2] *Cf.* United States *v.* Ferry Company, 21 Fed. Rep. 331; The City of Salem, 38 Fed. Rep. 762, and The Oysters Police Steamers of Maryland, 31 Fed. Rep. 763. In this last case police steamers belonging to a state were forced to have their boilers examined by an inspector of the United States.

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exercise of the power to regulate commerce in Patterson *v.* The Bark Eudora.[1]

Another case, in which Congressional regulation of the contractual relations of persons engaged in navigation is recognized as proper, is that of Lord *v.* Steamship Company,[2] where an act of Congress fixing the liability of the owner of a vessel for any property shipped on such vessel was held to apply, as a regulation of interstate commerce, to a shipment on a steamer plying between San Francisco and San Diego, both ports of California. The only question to which the court devoted any attention was the question whether the commerce to which it was attempted to apply the act of Congress was interstate commerce or state commerce. It was assumed that the regulation was proper if the commerce were foreign or interstate.[3]

We may therefore say, first, that Congress has wide powers of regulation over that part of commerce which is known as navigation, regardless of the fact that the instrumentality of navigation regulated is made use of merely between two ports in the same state, and second, that these powers extend to the contractual relations of the persons, both employers and employed, engaged in navigation.[4]

In the exercise of these powers Congress, from the beginning of our history as a nation, has assumed jurisdiction of the navigable waters of the United States[5]; has insisted on a license from all vessels[6] and has inspected all steam vessels navigating

[1] 190 U. S. 169, approving Robertson *v.* Baldwin, 165 U. S. 275. In this last case the only question which was considered was whether the act of Congress was constitutional from the viewpoint of the thirteenth amendment, prohibiting slavery or involuntary servitude except for crime. The court did not even consider whether the act was proper as a regulation of commerce or navigation.

[2] 102 U. S. 541.

[3] *Cf. In re* Garnett, 141 U. S. 1, in which it was held that Congress might constitutionally regulate the liability of the owners of vessels plying between two points in a state situated on the navigable waters of the United States.

[4] It is not certain that Congress has the power to regulate the relations of seamen not engaged in foreign or interstate navigation; *cf.* Patterson *v.* The Bark Eudora, 190 U. S. 169, where the court expressly refuses to give an opinion on this question.

[5] Even in opposition to the wishes of some particular state; *cf.* Wisconsin *v.* Duluth, 96 U. S. 379.

[6] The Daniel Ball, 10 Wallace, 557.

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such waters[1]; has formulated rules of navigation[2]; has regulated the contractual relations of employers and employed[3] and of owners and shippers[4]; and has punished acts incidental to navigation which tended to obstruct it.[5]

Are there now any reasons why the rules which have been formulated by the Supreme Court with regard to navigation are to be limited in their application when applied to interstate and foreign commerce by land instead of by water?

There are, it must be admitted, two provisions in the United States Constitution which might seem to confer upon the United States government as a whole wider powers with regard to commerce by water than by land. Thus article 1, section 8, clause 10 gives Congress power "to define and punish piracies and

[1] The Oyster Police Steamers *etc.*, 31 Fed. Rep. 763.

[2] The Delaware, 161 U. S. 459; The New York, 175 U. S. 187.

[3] Patterson *v.* The Bark Eudora, 190 U. S. 169.

[4] *Ex parte* Garnett, 141 U. S. 1.

[5] In United States *v.* Coombs, 12 Peters, 72, the question submitted to the court was whether a circuit court of the United States had jurisdiction to punish one who, contrary to an act of Congress, had plundered a wrecked vessel, the offense having been committed above high water mark. Justice Story, who delivered the opinion, held that the court could not base its jurisdiction on the clause of the constitution which provided that the judicial power of the United States should extend "to all cases of admiralty and maritime jurisdiction," but that it did have jurisdiction under the clause which authorized Congress to regulate commerce. In support of this ruling Justice Story said: "We are of opinion that, under the clause of the constitution giving power to Congress 'to regulate commerce with foreign nations and among the several states,' Congress possessed the power to punish offences of the sort which are enumerated in the ninth section of the act of 1825, now under consideration. The power to regulate commerce includes the power to regulate navigation, as connected with the commerce with foreign nations and among the states . . It does not stop at the mere boundary line of a state, nor is it confined to acts done on the water, or in the necessary course of the navigation thereof. It extends to such acts done on land, which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce and navigation with foreign nations and among the states. Any offence which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land, may be punished by Congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers. No one can doubt that the various offences enumerated in the ninth section of the act are all of a nature which tend essentially to obstruct, prevent, or destroy the due operations of commerce and navigation with foreign nations and among the several states. Congress have, in a great variety of cases, acted upon this interpretation of the constitution, from the earliest period after the constitution . . . ."

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felonies committed on the high seas," while article 3, section 2 provides that the judicial power of the United States "shall extend . . . to all cases of admiralty and maritime jurisdiction." The former clause merely gives power to Congress to define and punish certain kinds of crimes. The latter clause, however, is believed by some to be the main if not the sole basis of the power of Congress to regulate navigation.[1]

It is difficult to ascertain, from an examination of the decisions of the Supreme Court and the other United States courts relative to the power of Congress to regulate navigation, what is the accepted judicial opinion as to the source of this power, *i. e.*, whether it is to be found in the commerce clause or in the admiralty clause. The original view of the Supreme Court seems to have been that the source of the power to regulate navigation was to be found in the commerce clause. This was certainly the opinion of Chief Justice Marshall.[2] Not only did he make the commerce clause the basis of the power to regulate navigation, but he extended this power so as to include everything incidental to foreign and interstate navigation. Thus he said:

> It is obvious that the government of the Union, in the exercise of its express powers, that, for example, of regulating commerce with foreign nations and among the states, may use means that may also be employed by a state, in the exercise of its acknowledged powers; that, for example, of regulating commerce within the state. If Congress license vessels to sail from one port to another in the same state, the act is supposed to be, necessarily, incidental to the power expressly granted to Congress, and implies no claim of a direct power to regulate the purely internal commerce of a state, or to act directly on its system of police.[3]

[1] Thus in the brief of the defendants in the Employers' Liability Cases, 207 U. S. 463, the statement is made that the cases cited in the brief of the government as to the rule of damages in the case of injuries on vessels do not fall under the commerce clause but under the admiralty and maritime jurisdiction.

[2] *Cf.* citation from Gibbons *v.* Ogden, *supra*, p. 220, note 1.

[3] Gibbons *v.* Ogden, 9 Wheaton, 1, at p. 204. Justice Johnson delivered a separate opinion, (pp. 225–227), concurring with the result reached by the chief justice but expressing a different view as to the extent of the commerce power. After reviewing the events leading up to the adoption of the Constitution, he said: "The history of the times will, therefore, sustain the opinion, that the grant of power over com-

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The derivation of the power to regulate navigation from the commerce clause rather than from the admiralty clause was probably due to the feeling that a wider power would thus be secured to Congress. For at this time (1824) it was believed that the admiralty jurisdiction was limited to waters affected by the ebb and flow of the tide. In the case of The Thomas Jefferson,[1] in which this rule was laid down, Justice Story said: "Whether under the power to regulate commerce between the states, Congress may not extend the remedy, by the summary process of the admiralty, to the case of voyages on the western waters, it is unnecessary for us to consider." Chief Justice Marshall also claimed that the power to regulate commerce would include commerce on streams not at the time regarded as navigable.[2] This seems to have been the view of the Supreme Court as late as 1868. In that year Justice Nelson, in upholding as constitutional an act of Congress which regulated the sale and mortgage of vessels of the United States, said:

> Congress having created, as it were, this species of property and conferred upon it its chief value under the power given in the Constitution to regulate commerce, we perceive no reason for entertaining any serious doubt but that this power may be extended to the security and protection of the rights and title of all persons dealing therein. The judicial mind seems to have generally taken this direction.[3]

merce, if intended to be commensurate with the evils existing and the purpose of remedying those evils, could be only commensurate with the power of the states over the subject. And this opinion is supported by a very remarkable evidence of the general understanding of the whole American people when the grant was made. . . . The power of a sovereign state over commerce, therefore, amounts to nothing more than a power to limit and restrain it at pleasure. And since the power to prescribe the limits to its freedom necessarily implies the power to determine what shall remain unrestrained, it follows that the power must be exclusive; it can reside in but one potentate; and hence the grant of this power carries with it the whole subject. . . . The 'power to regulate commerce' here meant to be granted was that power to regulate commerce which previously existed in the states."

[1] 10 Wheaton, 428 (1825).

[2] Gibbons *v.* Ogden, at p. 195. *Cf.* also the opinion of Savage, C. J., in North River Steamboat Company *v.* Livingston, 3 Cowen, 713, at p. 751.

[3] White's Bank *v.* Smith, 7 Wallace, 646, at p. 656. In support of the statement quoted above, the court cited: The Martha Washington, 25 Law Reporter, 22; Fontaine *v.* Beers, 19 Ala. 722; Mitchell *v.* Steelman, 8 Cal. 363; Shaw *v.* McCandless, 36 Miss. 296.

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Finally in Patterson *v.* The Bark Eudora, as has been said,[1] an act of Congress regulating the method of hiring seamen was spoken of as a regulation of commerce; and in The Lottawanna[2] Justice Bradley, delivering the opinion of the Supreme Court as to what was the maritime law which was to be applied in the case at bar, expressed the view that Congress got its power to determine the maritime law from its power to regulate commerce.[3]

[1] *Supra*, p. 225.

[2] 21 Wallace, 558.

[3] Justice Bradley said: "To ascertain, therefore, what the maritime law of this country is, it is not enough to read the French, German, Italian and other foreign works on the subject, or the codes which they have framed; but we must have regard to our own legal history, constitution, legislation, usages and adjudications as well. The decisions of this court illustrative of these sources, and giving construction to the laws and Constitution are especially to be considered; . . . But we must always remember that the court cannot make the law; it can only declare it. If within its proper scope any change is desired in its rules, other than those of procedure, it must be made by the legislative department. It cannot be supposed that the framers of the Constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed. The scope of the maritime law and that of commercial regulation are not coterminous, it is true, but the latter embraces much the largest portion of the ground covered by the former. Under it Congress has regulated the registry, enrolment, license and nationality of ships and vessels; the method of recording bills of sale and mortgages thereon; the rights and duties of seamen; the limitations of the responsibility of shipowners for the negligence and misconduct of their captain and crews; and many other things of a character truly maritime." *Ibid.*, pp. 576, 577. *Cf.* also the opinion of Justice Story in United States *v.* Coombs, 12 Peters, 72 (*supra*, p. 226, n. 5), claiming for Congress the power under the commerce clause to punish the plundering of wrecks even where the offense takes place above high water and therefore within the jurisdiction of a state. The statement made in Steamboat Sunswick, 6 Benedict, 112, is interesting as showing what was the view of the lower courts, as late as 1892, as to what power was exercised by Congress in providing for the inspection of steamboats. The steamboat concerned was a ferry boat plying between Manhattan and Long Island—both in the state of New York and separated by the East River, an arm of the sea. The court said: "Judicial notice may be taken of the fact that Astoria is on an island, which contains a large population and has numerous and extensive manufactories and large cities within its bounds; that its inhabitants have commercial relations with various states of the Union, and use the ferry boats as the ordinary means of communication between the island and the mainland; that upon these boats large quantities of merchandise and numerous passengers, destined to places in different states, are necessarily transported in the ordinary course of daily business; and that it is principally by means of these ferries that the commerce between Long Island and other states is carried on." The court admitted that there was no evidence "showing a transporting on this ferry boat, at

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In the meantime, however, the law had developed in two directions. On the one hand, the admiralty jurisdiction had been extended to all waters upon which navigation was possible between points in a state and points outside of a state, regardless of the nature of the business in which a vessel might be engaged[1]; and, on the other hand, there had grown up the conception of an intrastate commerce which was not subject to the regulation of Congress. That such a commerce existed was perhaps conceded by Chief Justice Marshall, but, with the development of state-rights ideas, the extent of this field was regarded as wider than the great chief justice would probably have admitted. It was apparently felt by the Supreme Court that, under the sway of such political ideas, the conditions of legal development were different from those which were believed to exist at the time of the decision in Gibbons *v.* Ogden, and that greater powers of regulation over navigation could be recognized as belonging to Congress under the admiralty than under the commerce clause. Thus in the case of The Belfast,[2] Justice Clifford said:

> Unable to deny that admiralty has jurisdiction over marine torts, though the voyage is between ports and places in the same state, it having been held that jurisdiction in those cases resulted from the fact that the wrongful act was committed on navigable waters, the advocates of the more restricted jurisdiction over maritime contracts set up a distinction and contend that the admiralty jurisdiction over such contracts is limited by the power granted to Congress to regulate commerce.[3]

This position was not regarded as sound; and the decision of the court, delivered by Justice Clifford, was that a state could not impose on a vessel, licensed by the United States and engaged in navigation from a point within to a point without the

any particular time, of either merchandise which had begun to move as an article of trade from one state to another, or of passengers having a similar destination"; but it concluded that the boat must be inspected as provided by the act of Congress. This opinion should be compared with that in United States *v.* Burlington and Henderson County Ferry Company, 21 Fed. Rep. 331, decided in 1888, which derives the power of Congress to provide for the inspection of vessels from the admiralty clause.

[1] *Cf.* The Commerce, 1 Black, 574.

[2] 7 Wallace, 624 (1868). [3] *Ibid.*, p. 641.

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state, a maritime lien for goods that were to be carried between two points in the state and were lost *en route*.[1]

Under the influence of these ideas and with the desire to uphold the action of Congress in its regulation of navigation and to exclude state action thereupon—for it was believed that the rules for all navigation should be the same[2]—the more recent decisions of the Supreme Court have regarded the admiralty clause in the Constitution as not merely vesting jurisdiction in the courts of the United States to hear cases but as giving power to Congress to issue regulations.

This idea, that the power of Congress to regulate navigation may be based on some other clause of the Constitution than that which empowers Congress to regulate commerce, is hinted at in The Lottawanna,[3] decided in 1874; is definitely announced in Butler *v.* Boston Steamship Company,[4] decided in 1888; and receives its most complete and forcible expression in *In re* Garnett,[5] decided in 1890. In this case, in which a law of Congress limiting the liability of owners of vessels plying between two places in the same state was upheld as constitutional, the court said:

> It is unnecessary to invoke the power given to Congress to regulate commerce with foreign nations, and among the several states, in order to find authority to pass the law in question. The act of Congress which limits the liability of ship owners was passed in amendment of the maritime law of the country, and the power to make such amendments is coextensive with that law. It is not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce; but, in maritime matters, it extends to all matters and places to which the maritime law extends.[6]

[1] *Cf.* the opinion of Justice Miller in The Bright Star, Woolw. 266.

[2] *Cf.* opinion of Judge Love in United States *v.* Ferry Company, 21 Fed. Rep. 331, at p. 340.

[3] *Supra*, p. 229.

[4] 130 U. S. 527. In this case the court said: "As the Constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction,' and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature, and not in the state legislatures" (p. 557).

[5] 141 U. S. 1.

[6] *Ibid.*, p. 12.

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Are we now to accept the theory that these decisions as to the power of Congress to regulate navigation are not applicable to commerce by land; and, as a consequence, are we to conclude that the Supreme Court, abandoning the view expressed by Chief Justice Marshall, has committed itself to the idea that the power to regulate interstate commerce by land does not carry with it the power to regulate all matters of intrastate commerce which incidentally affect the commerce subject to the regulation of Congress? Such a conclusion seems both unnecessary and improper. The utterances of the court are not decisive on this point. All that they hold is that Congress does not derive its power to regulate navigation solely from its power to regulate commerce. The court has not as yet been called upon to decide, and it has therefore not decided, that matters incidental to interstate commerce by land are not subject to regulation by Congress in the exercise of its power to regulate commerce among the states. Indeed, as will be pointed out later, many of the most recent decisions of the Supreme Court seem to accord to Congress, in matters which fall primarily within the competence of the several states but which are incidental to interstate commerce by land, rights similar to those claimed by Marshall for Congress—and, as a matter of fact, since exercised by it—with regard to such commerce by water.

It may therefore be said that, while the Supreme Court, thanks to the admiralty clause, has found it unnecessary to base the right of Congress to regulate navigation solely on the power to regulate commerce, there are numerous judicial utterances to the effect that such regulation of navigation is as a matter of fact a regulation of commerce. It cannot be denied, however, that the admiralty clause has had an influence, particularly in recent years, in extending both the jurisdiction of the United States courts and the legislative power of Congress over navigation.[1]

[1] It is interesting to consider for a moment the effects upon our system of government which would follow the general adoption of the rule that a grant by the Constitution of jurisdiction to the courts of the United States carries with it a grant to Congress of power to fix the law which the United States courts are to apply in the exercise of their jurisdiction. The same section of the Constitution which confers

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II. *The power of Congress to regulate transportation by land*

Originally, as has been intimated, Congress did not attempt to regulate commerce except upon the navigable waters of the United States. Indeed, we find no serious attempt to regulate commerce by land until about the middle of the nineteenth century. Justice Moody, in a dissenting opinion in the Employers' Liability Cases[1] refers to this matter as follows:

It is said that Congress has never before enacted legislation of this nature for the government of interstate commerce on land, though it has for the government of such commerce upon the water and for the government of foreign commerce; that on the contrary the relations affected have been controlled by the undoubted power of the states to govern men and things within their respective dominions; and that this omission of Congress is of controlling significance. The fundamental fallacy of this argument is that it misunderstands the nature of the Constitution, undervalues its usefulness, and forgets that its unchanging provisions are adaptable to the infinite variety of the changing conditions of our national life. Surely there is no statute of limitations which bars Congress from the exercise of any of its granted powers, nor any authority, save that of the people whom it represents, which may with propriety challenge the wisdom of its choice of the time when remedies shall first be applied to what it deems wrong. It cannot be doubted that the exercise of a power for the first time is a circumstance to be considered. But in this case it is a circumstance whose significance disappears in the light of history. Henry Adams, a writer of high authority, in the first chapter of his History of the United States, has drawn a vivid picture of the conditions of our national life at the beginning of the nineteenth century. The center of population was near Baltimore. The interior was almost impenetrable except by the waterways and two wagon roads from Philadelphia to Pittsburg and from the Potomac to the Monongahela. The scattered settlements of what was then the Western country were severed from the seaboard settlements

admiralty jurisdiction upon the United States courts provides that the judicial power of those courts shall extend to "controversies . . . between citizens of different states." If the principle which underlies the rule under consideration—that the admiralty clause gives Congress power to legislate is carried to its logical conclusion, Congress has the power to fix the law which shall govern most of the relations existing between the citizens of different states and, if it sees fit to do so, may codify the private law of the United States.

[1] 207 U. S. 463.

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by mountain ranges, and there was little connection between the two almost independent peoples. There was scarcely a possibility of trade between the states except along the seacoast and over the dangerous and uncertain rivers. "The experience of mankind," says the author, p. 7, "proved trade to be dependent on water communications, and as yet Americans did not dream that the experience of mankind was useless to them." We need not look beyond these conditions for an explanation why Congress, though it early and vigorously exercised its power of legislation over foreign commerce and interstate commerce by water, left it unused in respect to interstate commerce on the land. As population multiplied, bringing the isolated settlements nearer to each other, wealth increased, creating a wider demand for commodities, and roads and bridges came to be better and more numerous, doubtless overland commerce was somewhat stimulated. But the iron restrictions which nature had placed upon land transportation remained constant until they were unloosed by the operation of the steam railroad. The system of steam transportation began modestly by the construction of short lines, often wholly within a single state. These lines were lengthened by extensions and consolidations, until at the present time the states of the Union are all bound together by a network of interstate railroads. Their operation, aided by the quick and cheap transmission of the mails, and the communication of intelligence by electricity, has transformed the commerce of the country. Interstate commerce by land, once so slight as to be unworthy of the attention of the national legislature, has come to be the most important part of all trade, and it is not too much to say that the daily needs of the factory and the household are no longer dependent upon the resources of the locality, but are largely supplied by the products of other states.

It was not reasonably to be expected that a phenomenon so contrary to the experience of mankind, so vast, so rapidly developing and changing, as the growth of land commerce among the states, would speedily be appreciated in all its aspects, or would at once call forth the exercise of all the unused power vested in Congress by the commerce clause of the Constitution. Such a phenomenon demands study and experience. The habit of our people, accentuated by our system of representative government, is not so much in legislation to anticipate problems as it is to deal with them after experience has shown them to exist. So Congress has exercised its power sparingly, step by step, and has acted only when experience seemed to it to require action. A description of its action in this respect was given in *In re Debs*, 158 U. S. 564, where it was said, p. 579: "Congress has exercised the

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power granted in respect to interstate commerce in a variety of legislative acts. Passing by for the present all that legislation in respect to commerce by water, and considering only that which bears upon railroad interstate transportation (for this is the specific matter involved in this case), these acts may be noticed: First. That of June 15, 1866, c. 124, 14 Stat. 66, carried into the Revised Statutes as §5258, which provides: 'Whereas the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several states, to establish post roads, and to raise and support armies: Therefore, *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every railroad company in the United States whose road is operated by steam, its successors, and assigns, be, and is hereby, authorized to carry upon and over its road, boats, bridges, and ferries all passengers, troops, government supplies, mails, freight, and property on their way from any state to another state, and to receive compensation therefor, and to connect with roads of other states so as to form continuous lines, for the transportation of the same to the place of destination. Second. That of March 3, 1873, c. 252, 17 Stat. 584 (Rev. Stat. §§ 4386 to 4389), which regulates the transportation of live stock over interstate railroads. Third. That of May 29, 1884, c. 60, § 6, 23 Stat. 31, 32, prohibiting interstate transportation by railroads of live stock affected with any contagious or infectious disease. Fourth. That of February 4, 1887, c. 104, 24 Stat. 379, with its amendments of March 2, 1889, c. 382, 25 Stat. 855, and February 10, 1891, c. 128, 26 Stat. 743, known as the 'Interstate Commerce Act,' by which a commission was created with large powers of regulation and control of interstate commerce by railroads, and the sixteenth section of which act gives to the courts of the United States power to enforce the orders of the commission. Fifth. That of October 1, 1888, c. 1063, 25 Stat. 501, providing for arbitration between railroad interstate companies and their employés; and, Sixth, the act of March 2, 1893, c. 196, 27 Stat. 531, requiring the use of automatic couplers on interstate trains, and empowering the Interstate Commerce Commission to enforce its provisions."

Since this decision other laws more fully regulating interstate commerce on land have been enacted, which need not here be stated. They show a constantly increasing tendency to exercise more fully and vigorously the power conferred by the commerce clause. It is well to notice, however, that Congress has assumed the duty of promoting the safety of public travel by enacting the Safety Appliance Law; an act to

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require reports of casualties to employés or passengers (31 Stat. 1446); a resolution directing the Interstate Commerce Commission to investigate and report on the necessity for block signals (34 Stat. 838); an act limiting the hours of service of employés; and the act under consideration. These acts, all relating to interstate transportation, demonstrate the belief of Congress that the safety of interstate travel is a matter of national concern, and its deliberate purpose to increase that safety by laws which it deems conducive to that end. I think, therefore, that we may consider whether this act finds authority in the commerce clause of the Constitution without embarrassment from any inferences which may be drawn from the inaction of Congress.[1]

Let us now endeavor to ascertain what has been the attitude of the Supreme Court toward the most important attempts which Congress has made in recent years to regulate interstate commerce by land, and which are recapitulated in the foregoing citation.[2]

The power of Congress, which was exercised in the passage of the Interstate Commerce Acts, to provide that charges by interstate carriers shall be reasonable and just, and that individual discriminations in the matter of rates shall not be made by such carriers. has been upheld in a series of cases. In some, the Supreme Court has upheld orders of the Interstate Commerce Commission (which was established by the act), requiring carriers to refrain from greater charges for carrying merchandise to one specified place than to another.[3] In others, criminal punishments have been imposed upon interstate carriers for having made individual discriminations by the giving of rebates.[4]

The act of Congress providing for safety appliances has been

[1] 207 U. S. 463, at pp. 521–525.

[2] Inasmuch as the Anti-Trust Act of 1890, which may be added to the list of the acts of Congress regulating interstate commerce, attempted to regulate commerce in quite a different way from that in which navigation had up to that time been regulated, a consideration of this act will be for the moment deferred.

[3] Cincinnati, New Orleans and Texas Pacific Railway *v.* Interstate Commerce Commission, 162 U. S. 184. *Cf.* also Interstate Commerce Commission *v.* Brimson, 154 U. S. 447, 473, which distinctly and expressly upholds the constitutionality of the act.

[4] New York Central Railroad Company *v.* United States, 212 U. S. 481.

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several times before the Supreme Court. In these cases the question of constitutionality seems not to have been raised; but in applying the provisions of the act to the particular facts of each case, the court has impliedly upheld its constitutionality. The act in question provided that after January 1, 1898 it should

be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine engaged in moving interstate traffic not equipped with a power driving-wheel brake . . . [or] to haul or permit to be hauled or use on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact [*etc.*] . . . [and] that any employé of any such common carrier who may be injured by any locomotive car or train in use contrary to the provision of this Act shall not be deemed to have assumed the risk thereby occasioned although continuing in the employment of such carrier after the unlawful use of such locomotive car or train had been brought to his knowledge.

In the case of Johnson *v.* Southern Pacific Company[1] the claim of an injured employee for damages was met by the objection that the dining car, in coupling which the accident occurred, was empty and had not actually started upon its trip; but the court overruled this objection on the ground that the car

had been constantly used for several years to furnish meals to passengers between San Francisco and Ogden and for no other purposes. On the day of the accident the eastbound train was so late that it was found that the car could not reach Ogden in time to return on the westbound train, and it was therefore dropped off at Promontory to be picked up by that train as it came along that evening.

The court on this ground overturned a verdict given for the defendant and ordered a new trial.

In Schlemmer *v.* Buffalo, Rochester and Pittsburg Railroad Company[2] the main question was as to the meaning of that clause in the act which provides that the employee "shall not be deemed to have assumed the risk" by reason of his knowledge of a violation of the act by the company. The Supreme Court of Pennsylvania had affirmed a judgment of non-suit on

[1] 196 U. S. 1. [2] 205 U. S. 1.

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the ground of contributory negligence on the part of the deceased. This judgment was reversed by the Supreme Court of the United States, because, in its opinion, the Pennsylvania court had refused to give effect to the provision of the act which covered this point.

In 1906 Congress attempted to exercise its power of regulating foreign and interstate commerce by providing that every carrier engaged in such commerce should be liable to "any of its employés" and, in case of the death of an employee, to his widow and children *etc.*, for all damages caused by the negligence of any of its officers, and that the fact that the employee was guilty of contributory negligence should not of itself bar recovery. In the Employers' Liability Cases[1] this law was declared to be unconstitutional because it in terms applied to "any of its [the carrier's] employés" and thus affected employees not engaged in interstate and foreign commerce. This decision was reached notwithstanding the fact that in both suits the plaintiff's deceased was at the time of his death admittedly "serving as a fireman on a locomotive actually engaged in moving an interstate commerce train." It was contended by the defendants in these cases that the act was unconstitutional upon another ground, *viz.*, because it attempted to regulate the relations of master and servant, which were not fairly parts of interstate commerce. This contention was declared to be unsound.[2] It may therefore

[1] 207 U. S. 463.

[2] Justice White in delivering the opinion of the court, said: "We may not test the power of Congress to regulate commerce solely by abstractly considering the particular subject to which a regulation relates, irrespective of whether the regulation in question is one of interstate commerce. On the contrary, the test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce. We think the unsoundness of the contention, that because the act regulates the relation of master and servant, it is unconstitutional, because under no circumstances and to no extent can the regulation of such subject be within the grant of authority to regulate commerce, is demonstrable. We say this because we fail to perceive any just reason for holding that Congress is without power to regulate the relation of master and servant, to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce, and therefore are within the grant to regulate that commerce or within the authority given to use all means appropriate to the exercise of the powers conferred. To illustrate: Take the case of

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be said that Congress may regulate many if not all of the legal relations of persons engaged in interstate transportation both with the public which employs them and with their employees, where such relations arise out of the act of transportation and where such employees are directly engaged in interstate or foreign commerce.

As yet, however, we have not ascertained whether the power of regulation possessed by Congress may be extended so as to embrace purely intrastate commerce by land where the regulation of that commerce is necessary in order that the regulation of interstate commerce may be effective.

This question has been considered if not decided by the Supreme Court in the recent cases upon the power of Congress to regulate interstate commerce. The Employers' Liability cases would seem to hold that the mere fact that one is an employee

an interstate railway train, that is, a train moving in interstate commerce, and the regulation of which is therefore, in the nature of things, a regulation of such commerce. It cannot be said that because a regulation adopted by Congress as to such train when so engaged in interstate commerce deals with the relation of the master to the servants operating such train or the relations of the servants engaged in such operation between themselves, that it is not a regulation of interstate commerce. This must be, since to admit the authority to regulate such train, and yet to say that all regulations which deal with the relation of master and servants engaged in its operation are invalid for want of power would be but to concede the power and then to deny it, or at all events to recognize the power and yet to render it incomplete.

Because of the reasons just stated we might well pass from the consideration of the subject. We add, however, that we think the error of the proposition is shown by previous decisions of this court. Thus the want of power in a state to interfere with an interstate commerce train, if thereby a direct burden is imposed upon interstate commerce, is settled beyond question. *Mississippi R. R. Com.* v. *Illinois Central R. R.*, 203 U. S. 335, 343, and cases cited; *Atlantic Coast Line R. R.* v. *Wharton et al., Railroad Commissioners*, 207 U. S. 328. And decisions cited in the margin, holding that state statutes which regulated the relation of master and servant were applicable to those actually engaged in an operation of interstate commerce, because the state power existed until Congress acted, by necessary implication refute the contention that a regulation of the subject, confined to interstate commerce, when adopted by Congress would be necessarily void because the regulation of the relation of master and servant was, however intimately connected with interstate commerce, beyond the power of Congress. And a like conclusion also persuasively results from previous rulings of this court concerning the act of Congress, known as the Safety Appliance Act. *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1; *Schlemmer* v. *Buffalo, Rochester etc. Ry.*, 205 U. S. 1." At least four of the members of the court concurred in Justice White's view that Congress has the power to regulate the relations of masters and servants engaged in interstate commerce.

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of a person engaged in interstate commerce is not sufficient to justify the regulation by Congress of his relations with his employer. In order to be subject to the regulatory power of Congress the employee himself must be actually engaged in interstate commerce. This would seem to be admitted by most of the judges who dissented from the majority decision in this case. If this principle is permanently adopted by the Supreme Court, it will have the effect of taking out of the jurisdiction of Congress all the employees of manufacturing corporations devoting their attention strictly to manufacturing. The contractual relations of such employees may not be the subject of congressional regulation. This view of the law is corroborated by such cases as Mugler *v.* Kansas[1], Powell *v.* Pennsylvania[2] and United States *v.* E. C. Knight Company[3], which hold that it is in the power of the states and not in the power of Congress to regulate manufacturing by determining, for example, what articles may be manufactured in the several states. It has also been expressly held that neither life insurance, nor insurance against fire, nor insurance against the perils of the sea is included within the constitutional conception of commerce.[4]

In the Employers' Liability cases, however, the Supreme Court did not determine whether Congress, in order to regulate effectively the technical operations of carriers engaged in interstate commerce, has the right incidentally to regulate intrastate commerce. In one of the cases arising under the Safety Appliances Acts, on the other hand, it decided that a car ordinarily used in interstate commerce was an instrument of such commerce although standing still and not having commenced its journey.[5] It has also held that a rate made by a railway from a point within a state to a point without a state is an interstate rate, and that no state may regulate that portion of it which may be charged for the journey within the state[6]; and further,

[1] 123 U. S. 623. [2] 127 U. S. 678. [3] 156 U. S. 1.

[4] New York Life Insurance Company *v.* Cravens, 178 U. S. 389; Insurance Company *v.* Dunham, 11 Wallace, 1; Hooper *v.* California, 155 U. S. 648.

[5] Johnson *v.* Southern Pacific Company, 205 U. S. 1.

[6] Wabash St. Louis and Pacific Railway Company *v.* Illinois, 118 U. S. 557, overruling Peik *v.* Chicago and Northwestern Railway Company, 94 U. S. 164.

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that this rate is subject, as an interstate rate, to the jurisdiction of the Interstate Commerce Commission.[1] Two recent cases[2] tend even more strongly in the same direction. In these cases the state of Kansas attempted to impose upon foreign corporations engaged in interstate commerce a tax upon their entire capital stock for the privilege of doing intrastate commerce. The Supreme Court held the law unconstitutional. Justice Harlan, who delivered the opinion of the court in both cases, said:

> The statutory requirement that the telegraph company shall, as a condition of its right to engage in local business in Kansas, pay into the the state school fund a given per cent of its authorized capital, representing all its business and property everywhere, is a burden on the company's interstate commerce and its privilege to engage in that commerce, in that it makes both such commerce as conducted by the company and its property outside of the state contribute to the support of the state's schools. . . . We can not fail to recognize the intimate connection which at this day exists between the interstate business done by interstate companies and the local business which, for the convenience of the people, must be done or can generally be better and more economically done by such interstate companies rather than by domestic companies organized to conduct only local business.

In reaching these conclusions the Supreme Court would seem to have been governed by the same ideas which it had in mind in deciding cases relative to the power of Congress to regulate navigation. Thus in the case of The Daniel Ball,[3] to which several references have already been made, the court upheld the action of the United States government in demanding a license of a steamboat plying navigable waters—in this case a river wholly within a state—between two points in the same state. The decision was based upon the grounds: first, that the vessel was engaged in navigating the waters of the United States, and second, that she was carrying merchandise destined

[1] Cincinnati, New Orleans and Texas Pacific Railway *v.* Interstate Commerce Commission, 162 U. S. 184.

[2] Western Union Telegraph Company *v.* Kansas and The Pullman Company *v.* Kansas, 30 Supreme Court Reporter, 190, 232.

[3] 10 Wallace, 557.

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for points out of the state, although it was admitted that she "did not run in connection with, or in continuation of, any line of vessels or railway leading to other states." In rendering this decision the court said:

The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one state, and some acting through two or more states, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress. It is said that if the position here asserted be sustained, there is no such thing as the domestic trade of a state; that Congress may take the entire control of the commerce of the country, and extend its regulations to the railroads within a state on which grain or fruit is transported to a distant market. We answer that the present case relates to transportation on the navigable waters of the United States, and we are not called upon to express an opinion upon the power of Congress over interstate commerce when carried on by land transportation. And we answer further, that we are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the states, when that agency extends through two or more states and when it is confined in its action entirely within the limits of a single state. If its authority does not extend to an agency in such commerce, when that agency is confined within the limits of a state, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at the boundary line at one end of a state, and leaving it at the boundary line at the other end, the federal jurisdiction would be entirely ousted, and the constitutional provision would become a dead letter.

In a recent circuit court of appeals case[1] it was held that the rule laid down in The Daniel Ball should be applied to interstate commerce by land, and that a car which was used to aid in the transport of goods from a point outside of the state to a point within the state was engaged in interstate commerce, although the car itself, running on a narrow-gauge road which ended in the state, could not go outside of the state. The company was accordingly punished for not equipping such car with

[1] United States *v.* Colorado and Northwestern Railway Company, 85 C. C. A. 27.

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automatic couplers in accordance with the act of Congress.[1] Further, it has been decided by the Supreme Court that a steam shovel, so arranged as to travel on its own wheels by rail and being hauled from a point in one state to a point in another state, is a car engaged in interstate commerce.[2] The Supreme Court, however, has not yet decided whether a car which is admittedly engaged only in intrastate commerce is subject to the regulatory power of Congress, *e. g.*, in the matter of safety appliances, where it is coupled to a car engaged in interstate commerce. If such a car is not regarded as subject to the power of Congress, the exercise by that body of its power to regulate interstate commerce will be rendered singularly ineffective; for automatic coupling by impact, as prescribed by Congress, is naturally impossible when one of the cars is not equipped with an automatic coupler; and, unless cars are actually coupled automatically by impact, the purpose of the regulation of Congress, *viz.*, the protection of the safety of trainmen engaged in interstate commerce, will not be realized.[3] It would seem therefore to be true that most regulations which might be passed as to the technical operations of railways engaged in interstate commerce would lose greatly in effectiveness if it were not possible to apply them also to vehicles of commerce engaged only in state commerce. Thus, if power brakes make for the safety of transportation, their absence in the case of cars exclusively engaged in state commerce would increase the dangers of interstate commerce where that was carried on over a railway engaged in both kinds of commerce. From many points of view, accordingly, effective regulation of interstate commerce would seem necessarily to involve the regulation of commerce which is primarily and strictly state commerce. Where this is the case, it would seem that the power to regulate state commerce as incident to the regulation of interstate commerce should be recognized as

[1] The contrary view, however, seems to have been adopted in United States *v.* Geddes, 65 C. C. A. 320.

[2] Schlemmer *v.* Buffalo *etc.* Railway Company, 205 U. S. 1.

[3] For this reason a lower state court has held that the Safety Appliance Acts forbid coupling such a car to an interstate car in any way except by impact. Winkler *v.* Philadelphia and Reading Railway Company, 4 Pennewill, (Del.) 80.

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possessed by Congress. Such would seem also to be the law, if the rules which have been applied to navigation are applicable to land commerce. The courts, as has been pointed out, already exhibit a tendency to adopt this view. The cases decided under the Anti-Trust Act[1] would seem to point in the same direction.

Do the same considerations which have determined the attitude of the Courts concerning navigation require a recognition of similar powers in Congress to regulate all commerce by land, whether it be interstate or foreign on the one hand or intrastate on the other?

At first blush it may seem that the conditions in land commerce are different from those in navigation. But as Justice Brewer, referring to the suggestion that there is a difference between natural highways, such as navigable waters, and artificial highways, such as railways, said in Monongahela Navigation Company *v.* United States:

> The power of Congress is not determined by the character of the highway. Nowhere in the Constitution is there given power in terms over highways, unless it be that clause to establish post-offices and post-roads. The power which Congress possesses in respect to this taking of property springs from the grant of power to regulate commerce, and the regulation of commerce implies as much control over an artificial as over a natural highway. They are simply the means and instrumentalities of commerce, and the power of Congress to regulate commerce carries with it power over all the means and instrumentalities by which commerce is carried on. There may be differences in the modes and manner of using these different highways, but such differences do not affect or limit that supreme power of Congress to regulate commerce and in such regulation to control its means and instrumentalities. We are so much accustomed to see artificial highways, such as common roads, turnpike roads and railroads, constructed under the authority of the states, and the improvement of natural highways carried on by the general government, that at the first it might seem that there was some inherent difference in the power of the national government over them. But the grant of the power is the same. There are not two clauses of the constitution, each severally applicable to a different kind of high-

[1] See *infra*, pp. 248 *et seq.*

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way. The fee of the soil in neither case is in the general government, but in the states or private individuals. The differences between the two are in their origin—nature provides the one, man establishes the other.[1]

In this case it was held that Congress might in the exercise of its commerce power condemn and appropriate, with just compensation, the property, consisting of locks and dams on navigable waters, of a corporation organized under a state law to improve the waters of a river for purposes of navigation.

If again it be said that land routes are constructed either directly by the states or under their authority, the answer is that it is not necessary that they be so constructed. Congress has under the constitution the power to construct them or to authorize their construction.[2] Not only may Congress grant to state corporations the franchise to operate an interstate railroad,[3] but it may also itself create corporations in order more effectively to exercise one of its constitutional powers[4]; and it may itself exercise the power of eminent domain[5], or it may give authority to exercise such a power to a corporation, even if such corporation is organized by a state.[6]

[1] 148 U. S. 312, 342.

[2] *Cf.* California *v.* Pacific Railroad Company, 127 U. S. 1, 39, where it is said: "The power to construct, or to authorize individuals or corporations to construct national highways and bridges from state to state, is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce . . . Of course the authority of Congress over the territories of the United States, and its power to grant franchises exercisable therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing states as well as territories, and employing the agency of state as well as federal corporations." In quoting this passage with approval the Supreme Court said, in Cherokee Nation *v.* Southern Kansas Railway Company, 135 U. S. 641: "Upon this point nothing more need be said." *Cf.* also Indiana *v.* United States, 148 U. S. 148, which impliedly recognizes the propriety of the action of Congress in providing for the construction of interstate highways; approved in Wilson *v.* Shaw, 204 U. S. 24, which goes far toward holding as constitutional the action of Congress in constructing the Panama Canal.

[3] This was decided in California *v.* Pacific Railroad Company, as a necessary part of the decision that California could not tax such a franchise.

[4] M'Culloch *v.* Maryland, 4 Wheaton, 316. [5] Kohl *v.* United States, 91 U. S. 367.

[6] United States *v.* Gettysburg Electric Railway Company, 160 U. S. 668.

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Up to the present time, as has been shown, Congress has very seldom taken action with regard to the construction of land highways and has only very recently, as in the Safety Appliances Acts and the Employers' Liability Acts, attempted any regulation of the technical operations of interstate carriers by land. But it would seem, as in the case of navigation, that its power of regulation should be recognized as extending to matters incidental to interstate commerce by land whenever their regulation is necessary to the effective regulation of such commerce, regardless of the fact that they are not strictly interstate commerce.

It is conceivable, in these days of scientific invention, that methods of transportation may be devised which do not make use, as do railways, of specially constructed highways. Thus it would not require an extraordinary development of motor vehicles using ordinary highways, or of the recently invented air ship, to provide us with means of communication which will make a distinction between interstate and intrastate vehicles as difficult and as inexpedient as in the case of vessels engaged in navigation. In order that travel and transportation may be safe under such conditions, all vehicles, whatever be their commercial character, must observe the same rules, and if a license be required they must be licensed upon the same terms. If such conditions should ever arise, no one can doubt that Congress with the approval of the Supreme Court will assert its power to regulate commerce by land or by air to the same extent to which it has already regulated commerce by water.

To reach these results the Supreme Court will, if necessary, abandon the idea so recently expressed that the power to regulate navigation is based on the admiralty clause and will resort to Chief Justice Marshall's view that this power is derived from the commerce clause. Any attempt to deny to Congress the right, for example, to insist that safety appliances shall be provided for all cars which use a highway capable of being used for interstate commerce, and to emphasize the distinction between an interstate and a state vehicle when that distinction will tend to diminish the effectiveness of the power of Congress to regulate interstate commerce, indicates an inability to see the fundamen-

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tal principle which the Supreme Court has steadily endeavored to apply in the long course of its history, *viz.*, uniform regulation of all commerce, whether by water or by land. When the commerce clause was believed to be broader than the admiralty clause, the court referred the power of Congress to regulate navigation to that clause. When by reason of the wider conception of navigable waters, which was developed through the exercise of the admiralty jurisdiction, the admiralty clause was regarded as vesting wider powers of regulation in Congress, resort was had by the court to that clause of the constitution. Such at any rate are the conclusions which we must draw from a study of the most recent cases determining the effect of the Anti-Trust Act of 1890.

III. *The power of Congress to regulate commerce other than transportation*

Until the latter part of the nineteenth century the regulation by Congress of navigation was not extended, except in a few cases, to anything but the means and instrumentalities of transportation. Indeed, the only laws passed by Congress that went beyond such limits were those which fixed the liability to shippers of carriers by water. In the case of commerce by land, however, Congress extended its regulation not only to carriers and shippers, but also to other persons who were engaged in foreign and interstate commerce. For while the decision that commerce included navigation, with all the implications which have been noted, laid the basis for the comprehensive powers of Congress to regulate transportation both by water and by land, a series of decisions limiting the powers of the states over commerce announced the principle that commerce was something more than mere transportation and communication and embraced, for example, sales and agreements with regard to sales. Thus the states were forbidden to tax salesmen of business houses in other states for the privilege of taking orders for goods within their limits.[1] Thus again the states were forbidden to prohibit the sale within their limits of what the Supreme

[1] Robbins *v.* Shelby County Taxing District, 120 U. S. 489.

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Court recognized to be a legitimate article of commerce.[1] In this way it was recognized that commerce was something more than transportation, and in this way naturally the powers of Congress were really increased beyond the extent to which they had originally been exercised with regard to navigation.

When there sprang up throughout this country, as a result of the very general concentration of industry, great corporations and congeries of corporations acting in harmony with each other, each great corporation or group of corporations apparently striving for a monopoly of the particular branch of industry to which its attention was devoted, the way was clear for Congress to extend, if it saw fit, its power of regulation to that part of foreign and interstate commerce not embraced within transportation. This field it attempted to occupy by the Anti-Trust Act, passed in the latter part of the nineteenth century. This act made illegal any contract, combination or conspiracy in restraint of trade or commerce with foreign nations or among the several states, thus laying down the rule that there should be freedom of competition in foreign and interstate commerce.

One of the first, if not the first, of the cases arising under this act was United States *v.* E. C. Knight Company,[2] in which it was held that a purchase by one manufacturing corporation of the plant of a competitor was not and could not be prohibited by the act of Congress, because manufacturing was not commerce, even if the articles manufactured were intended to be sent out of the state.

Since the decision of this case a number of other cases have come before the court. Some of these have involved the legality of agreements of transportation companies and are of interest not because they have in any way explained the meaning of commerce—for the companies concerned were admittedly engaged in commerce—but because they indicated an intention upon the part of the court to apply the act strictly, without considering whether the effect of the contract in question was

[1] Leisy *v.* Hardin, 135 U. S. 100; Schollenberger *v.* Pennsylvania, 171 U. S. 1.

[2] 156 U. S. 1.

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or was not an unreasonable restraint of commerce.[1] Other cases, however, have attempted to define or at any rate to describe commerce, and have held that interstate commerce comprehends "intercourse for all the purposes of trade in any and all its forms, including the transportation, purchase, sale and exchange of commodities between citizens of different states," and that the power to regulate it "embraces all the instrumentalities by which such commerce is conducted."[2] Accordingly agreements have been held to be illegal between corporations engaged in the manufacture, sale and transportation of commodities, whereby competition among them as to interstate commerce was avoided.[3] In the Northern Securities case the formation of a holding company, which actually controlled through ownership of stock the operations of competing transportation companies, was held to be illegal; and in Continental Wall Paper Company *v.* Voight it was held that, if articles were sold in accordance with a contract made in restraint of commerce among the several states, the seller could not recover the purchase price.[4]

Some of the later cases decided in applying the Anti-Trust Act have gone far in limiting the effect of the decision in the Knight case. Thus in Swift and Company *v.* United States[5] the bill of injunction granted in the circuit court charged

a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live-stock markets of the different states, to bid up prices for a few days in order to induce cattle men to send their stock to the stock yards, to fix prices at which they will sell and to that end to restrict shipments of meat when necessary, to establish a uniform rule of credit to dealers

[1] Such cases were United States *v.* Trans-Missouri Freight Association, 166 U. S. 290; and United States *v.* Joint Traffic Association, 171 U. S. 505.

[2] Northern Securities Company *v.* United States, 193 U. S. 197.

[3] Addyston Pipe and Steel Company *v.* United States, 175 U. S. 211; Montague *v.* Lowry, 193 U. S. 38; Continental Wall Paper Company *v.* Voight *etc.*, 212 U. S. 227.

[4] This case was distinguished from Connolly *v.* Union Sewer Pipe Co., 184 U. S. 540, where recovery was permitted on a contract of sale, not a part of the illegal combination into which the seller was admitted to have entered.

[5] 196 U. S. 375.

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and to keep a black list, to make uniform and improper charges for cartage, and finally to get less than lawful rates from the railroads to the exclusion of competitors. It is true that the last charge is not clearly stated to be a part of the combination.

This bill was demurred to, and the case came before the Supreme Court on the demurrer, so that there was no question as to the facts. The Supreme Court modified slightly but otherwise affirmed the decree of the lower court issuing the injunction. In the course of the opinion delivered by Justice Holmes it was said, in answer to the objection that the bill did not set forth sufficient definite or specific facts:

> The scheme as a whole seems to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it . . . Although the combination alleged embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote or merely probable. On the allegations of the bill the latter commerce no less, perhaps even more, than commerce within a single state is an object of attack.

Somewhat the same view was taken by the Supreme Court in the later case of Loewe *v.* Lawlor.[1] This case also came up on demurrer and involved the legality under the Anti-Trust Act of an alleged combination among workmen in the nature of a boycott following a strike. The averments of the complaint, as summarized by the court, were:

> that there was an existing interstate traffic between plaintiffs and citizens of other states, and that for the direct purpose of destroying such interstate traffic defendants combined, not merely to prevent plaintiffs from manufacturing articles then and there intended for transportation beyond the state, but also to prevent the vendees from reselling the hats which they had imported from Connecticut, or from further negotiating with plaintiffs for the purchase and interstate transportation of such hats from Connecticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a state, and some of them were in themselves as a part of their obvious purpose and effect beyond the scope

[1] 208 U. S. 274.

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of federal authority, still, as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of interstate business might be affected in carrying it out. If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced, and at the other end after physical transportation ended, was immaterial.

The court decided that "a case within the statute was set up and that the demurrer should have been overruled." It may therefore be said that in the case of commerce by land, whether transportation or not, as well as in the case of navigation, Congress has the right incidentally to regulate intrastate commerce where such regulation is necessary to the effective regulation of interstate commerce.

IV. *The power of Congress to prohibit commerce*

The rule which had been actually applied to navigation, *viz.*, that Congress, in the exercise of its power to regulate, has the right to prohibit commerce, has been applied to both foreign commerce, not navigation,[1] and to interstate commerce by land.[2] In United States *v.* Delaware and Hudson Company, Justice White, in delivering the opinion of the court, said: "We then construe the statute as prohibiting a railroad company engaged in interstate commerce from transporting in such commerce articles or commodities" under conditions which are specified. "The question then arises whether, as thus construed, the statute was inherently within the power of Congress to enact as a regulation of commerce. That it was, we think, is apparent."[3]

[1] Buttfield *v.* Stranahan, 192 U. S. 470.

[2] Champion *v.* Ames, 188 U. S. 321; United States *v.* Delaware and Hudson Company, 213 U. S. 366.

[3] He added that, if reference to authority were necessary, it was "afforded by a consideration of the ruling in the *New Haven* case to which we have previously referred." (This was the case of the New Haven Railroad *v.* Interstate Commerce Commission, 200 U. S. 361, in which it was held that the Interstate Commerce Act prevented "a carrier engaged in interstate commerce from buying and selling a commodity which it carried, in such a way as to frustrate the provisions of the act, even if the effect of applying the act would be substantially to render buying and selling by an interstate carrier of a commodity which it transported practically impossible.) "We do not say this," Justice White continued, "upon the assumption that by the

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The hint given in this opinion, that the power of Congress to regulate commerce is subject to the ordinary constitutional limitations on the powers of the United States government, is made in a more forcible manner in Champion *v.* Ames, where it is distinctly stated that the commerce power of Congress "although plenary cannot be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution"; and in Monongahela Navigation Company *v.* United States[1] and in Adair *v.* United States[2] it is held that the commerce power is subject to the limitations of the fifth amendment.

The foregoing examination of the decisions upon the recent legislation of Congress regulating commerce would appear to yield the following results. In the first place, there has been an extension of the matter subject to Congressional regulation. Not merely transportation and its incidents but also the sale and exchange of commodities are commerce. In the second place, the fact that the power to regulate implies the power, subject to other constitutional limitations, to prohibit, is given an emphasis which it had never before received apart from the regulation of navigation.

V. *The power of the states to prohibit the sale of articles*

It has been pointed out that a state has no power, in the absence of Congressional action, to prohibit the sale in the state of what the Supreme Court considers to be an article of foreign or interstate commerce. Such an article is one which, in the opinion of the court, is made the subject of purchase and sale in the ordinary course of trade and is at the same time in the

grant of power to regulate commerce the authority of the government of the United States has been unduly limited on the one hand and inordinately extended on the other, nor do we rest it upon the hypothesis that the power conferred embraces the right absolutely to prohibit the movement between the states of lawful commodities or to destroy the governmental power of the states as to subjects within their jurisdiction, however remotely and indirectly the exercise of such powers may touch interstate commerce. On the contrary, putting these considerations entirely out of mind, the conclusion just previously stated rests upon what we deem to be the obvious result of the statute as we have interpreted it; that it merely and unequivocally is confined to a regulation which Congress has the power to adopt and to which all preëxisting rights of the railroad companies were subordinated."

[1] 148 U. S. 312. [2] 208 U. S. 161.

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original package in which it has been brought into the state and in the hands of the person who brought it in.[1] But it has been held that Congress may constitutionally provide that such an article may on its arrival in the state be subject to the police power of the state.[2] Congress may therefore subject to state regulation any article of foreign or interstate commerce.

Further, the Supreme Court has indicated in a number of cases that, notwithstanding the grant of the commerce power to Congress, the states have the right to prohibit the sale within their borders of any article which by reason of its unmerchantable condition they deem prejudicial to health or morals, and which because of this unmerchantable condition is not an article of commerce.[3] The court has also held that a state may prohibit the sale in the state of an article which by reason of adulteration is calculated to deceive an unwary purchaser, although the article be sold in the original package and by the person who brought it into the state.[4] In most of the cases recognizing this power in the states, the state had prohibited the sale of the article in the absence of Congressional action as to the article in question. In Plumley *v.* Massachusetts, however, the article the sale of which was prohibited was oleomargarine which had been manufactured, packed and branded in accordance with an act of Congress regulating the manufacture, sale, importation and exportation of oleomargarine and imposing a tax thereon. Notwithstanding this action of Congress, the Supreme Court held that, because the oleomargarine in question was colored to imitate yellow butter manufactured out of unadulterated milk or cream, the state might prohibit its sale

[1] Leisy *v.* Hardin, 135 U. S. 100. [2] *In re* Rahrer, 140 U. S. 545.

[3] *Cf.* Hannibal *etc.* Railroad Company *v.* Husen, 95 U. S. 465, and Bowman *v.* Chicago and Northwestern Railway Company, 125 U. S. 465, where it is said that a state may exclude persons and animals suffering from contagious or infectious diseases, as well as convicts or lunatics or other persons liable to be a public charge; also The License Cases, 5 Howard, 504, 600, where it is intimated that the state may exclude an article which "from its nature does not belong to commerce, or if its condition from putrescence or other cause is such when it is about to enter the state that it no longer belongs to commerce.

[4] Plumley *v.* Massachusetts, 155 U. S. 461. *Cf.* also Patterson *v.* Kentucky, 97 U. S. 501, and Crossman *v.* Lurman, 192 U. S. 189.

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within the state.[1] It may accordingly be said that Congress may not, in the exercise of its power to regulate commerce, force a state to permit the sale within its borders of an article which by reason of its condition is deleterious to the public health or by reason of its appearance is liable to deceive the unwary purchaser and which, therefore, is not an article of commerce.[2]

Finally, it is to be remembered that Congress does not possess any police power apart from that which is incident to its power over interstate and foreign commerce. Thus it has been held that, while Congress may punish any one who brings to the United States any alien woman for an immoral purpose, it may not punish one who keeps or harbors such a woman within three years after she is brought here.[3]

VI. *Conclusions*

In summarizing the conclusions which may be drawn from an examination of the decisions of the Supreme Court upon the power of Congress to regulate commerce with foreign nations and among the several states, it seems advisable to present them under the following heads: first, what is commerce; second what is interstate commerce; and third, what is the meaning of the word "regulate."

(1) Commerce, as a subject of Congressional regulation, embraces, in the first place, transportation both by water and by land and the means and instrumentalities of transportation. Commerce therefore includes not merely the act of transporting persons or articles from one place to another, but both natural and artificial land and water routes and their terminals, such as

[1] In this case four Justices dissented, and, in the later case of Schollenberger *v.* Pennsylvania, 171 U. S. 1, it was held that the state might not prohibit the sale of all oleomargarine. In this last case, the court refers to the act of Congress with reference to oleomargarine and says: "Any legislation of Congress upon the subject must of course be regarded by this court as a fact of the first importance. If Congress has affirmatively pronounced the article to be a proper subject of commerce, we should properly be influenced by that declaration."

[2] *Cf.* also Patapsco Guana Company *v.* North Carolina Board of Agriculture, 171 U. S. 345, and Reid *v.* Colorado, 187 U. S. 137, which recognizes the right of the state in the absence of action by Congress to pass *bona fide* non-discriminating inspection laws.

[3] Keller *v.* United States, 213 U. S. 138.

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harbors, the vehicles by which the act of transporting is performed, and the persons, both carriers, shippers and consignees on the one hand, and employers and employed on the other, engaged in the act of transporting. Commerce embraces, in the second place, purchases and sales and the negotiations leading thereto of all articles ordinarily made the subject of trade, and agreements for such purchases and sales, both between the sellers among themselves and the purchasers among themselves on the one hand, and the sellers and purchasers with each other on the other hand. Commerce therefore does not embrace insurance or manufacturing; although the tendency of the courts is to include manufacturing where its regulation is necessary to the effective regulation of what is admittedly commerce. Commerce does not embrace the ordinary internal police of the states, not incidental to commerce transcending the borders of a single state; although there are a few cases which hold that Congress may forbid, in the exercise of the commerce power, acts such as the plundering of wrecked vessels, even where such plundering has taken place above high water mark and therefore within the jurisdiction of a state.

(2) Commerce among the states is, first, that commerce, as above described, which originates in one state and terminates in another state, and second, that commerce, as above described, which originates and terminates in the same state, where the regulation by Congress of such commerce is necessary to the effective regulation by that body of the commerce which originates in one state and terminates in another. On this account there is a tendency to regard as a part of interstate commerce the manufacture of articles by corporations or groups of corporations admittedly engaged in interstate commerce, where the regulation of such manufacturing is necessary to the effective regulation by Congress of what is recognized to be interstate commerce.

(3) The power to regulate commerce includes the powers: first, to construct or provide, even by the chartering of corporations, for the construction of commercial routes by water and by land, and to lay down the rules to be observed by those making use of such routes; second, to determine the legal, in-

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cluding the contractual, relations which shall exist between shippers and carriers, between carriers and their employees, between sellers, and between sellers and purchasers; third, to prohibit commerce in certain articles and certain methods of carrying on commerce and to license those engaged in commerce; and fourth, to subject interstate commerce, in certain respects, to regulation by the states. The exercise of all these powers is, however, subject to the limitations of the constitution, such as the fifth amendment, protecting private rights. Furthermore, the power to regulate does not include the right to regulate purely intrastate matters which have no relation to interstate commerce, nor the right to force upon a state an article which by reason of its condition is not an article of commerce.

Finally, it is to be observed that there has apparently been less objection, both on the part of the public, as evidenced by the smaller number of litigated cases, and on the part of the Supreme Court, as evidenced by its decisions, to accord to Congress a wide power over navigation than to accord to it such a power over land commerce. The explanation is probably to be found, in part, in the fact that the power of Congress over navigation was defined by, or at least under the influence of, Chief Justice Marshall, whose belief in wide national powers is so well known, and, in part in the desire of the people of the states that Congress should improve harbors and waterways.

The attempt has been made in this paper to show that there is no real basis, either in the nature of the subject or in the decisions of the Supreme Court, for a distinction between commerce by water and commerce by land, and to indicate that the Supreme Court will probably be forced by the necessities of the situation to apply to commerce by land the same rules which it has in the past applied to commerce by water, even if thereby the field which we have become accustomed to regard as subject to state rather than to Congressional action be seriously narrowed and that popularly recognized as in the jurisdiction of Congress be greatly enlarged.

FRANK J. GOODNOW.

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THE CONSTITUTIONAL STATUS OF THE DISTRICT OF COLUMBIA

TWO reasons are commonly given for the present anomalous government of our national capital. The one which appeals especially to those inhabitants of the capital who favor the present government is based on the practical operation of past governments compared with that of the present system. The other, one which has seemed sufficient to a number of prominent public men who have looked into the matter, is based on the provision of the United States Constitution which established the federal district. President Taft, in an address at a banquet given him by the leading citizens of Washington on May 8, 1909, explained the denial of self-government on constitutional grounds in the following words:

> This was taken out of the application of the principle of self-government in the very Constitution that was intended to put that in force in every other part of the country, and it was done because it was intended to have the representatives of all the people of the country control this one city, aud to prevent its being controlled by the parochial spirit that would necessarily govern men who did not look beyond the city to the grandeur of the nation and this as the representative of that nation.

At present Congress exercises over the District of Columbia, in addition to its national powers, all the powers of a state, including the power to control local government. Even of the purely local powers some are directly exercised by Congress, the local officials having very limited functions. Moreover, the local officials are either directly or indirectly appointed by and are responsible to the national government; and the inhabitants, who number one-third of a million, are absolutely unrepresented in their government, local, quasi-state or national, except through the uncertain medium of public opinion. In practice, public opinion is very largely taken into account, but its influence must always remain uncertain and decidedly inferior to that of actual

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representation. President Taft and others hold that actual representation is impracticable under the Constitution; but the opposite view is held by many prominent men, both local and national, and the matter can scarcely be considered as settled.

The provision of the Constitution, about which the whole controversy centers, is a part of the seventeenth clause of the eighth section of article one, and reads:

> The Congress shall have power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of Government of the United States.

The interpretation of this clause depends almost entirely upon the interpretation of one word, "exclusive." Does this word contemplate the exclusion of all other authorities, including the local inhabitants, as the president holds, or does it merely exclude the state governments? The fact that the word is not expressly qualified would seem to favor the former view; but the consideration that the powers conferred by this section on Congress, as the representative of the national government, are conferred upon it primarily as opposed to the state governments and not as opposed to the people, affords considerable room for doubt. It is not at all unlikely that the word "exclusive" was intended to have here the same, and merely the same, force as the express denial elsewhere to the states of powers in some of the fields placed under the authority of the national government. It will be well to consider how far the journal of the Constitutional Convention bears out this conclusion.

The draft of a constitution presented by Charles Pinckney, of South Carolina, on the third day of the Convention (May 29, 1787), made provision for a federal district, but the matter did not come up for discussion until July 26. At that time Colonel George Mason, of Virginia, spoke in favor of such a provision, arguing that the location of the national capital in a state, and especially at a state capital, would result in disputes over jurisdiction and would tend to "provincialize" Congress. John Langdon, of New Hampshire, pointed out the danger of the removal of the state capital to the place selected for the

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national capital, unless the national capital should be made free from all jurisdiction of an individual state. Other remarks at this time were very brief and had the same general trend. On August 11, the necessity of having a fixed seat of government in a central locality was briefly discussed. On September 5, the clause, as it now stands, was agreed to *nemine contradicente*.

It is evident that the main aim, at least, in giving to the capital its anomalous position, was the exclusion of the individual states from jurisdiction over it. If the framers of the Constitution had also in mind the exclusion of the people living at the capital, the journal of the Convention fails to show it. Nor can any such indication be found in the papers of Hamilton, Madison and Jay in *The Federalist*—the printed edition, so to speak, of the arguments of the Convention. Madison, to be sure, does devote a rather lengthy paragraph in the forty-third number to the subject of the national capital; but, far from sanctioning the complete suspension of formal republican government in the capital, parts of the paragraph can scarcely be interpreted otherwise than as clearly advocating the opposite course. Madison argued:

> The indisputable necessity of complete authority at the seat of government carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings interrupted with impunity, but a dependence of the members of the general government on the State comprehending the seat of government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence equally dishonorable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to the removal of the government, as still further to abridge its necessary independence. The extent of this federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it; as the State will no doubt provide in the compact

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for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election of the government which is to exercise authority over them, and as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State and of the inhabitants of the ceded part thereof to concur in the cession will be derived from the whole people of the State in their adoption of the Constitution, every imaginable objection seems to be obviated.

Madison's second sentence quite clearly indicates that no such radical step as the elimination of republican government was contemplated, for it characterizes the authority of Congress over its capital as identical with the authority of any state legislature over its own state capital. Obviously the intent of the Constitution was merely to transfer in this one instance the general supervisory authority over local government from its normal holder, the state legislature, to the national legislature. It is but natural to assume from this that Congress was expected to exercise its authority as the state legislatures exercised theirs; and this was exactly what Congress did, as governments were originally provided for the federal district no different in nature from municipal and county governments in the states. This interpretation has, moreover, received the highest judicial sanction, as the Supreme Court of the United States has several times drawn a close parallel between the relations of the United States to Washington and those of a state to its capital or any other of its cities.[1]

Madison goes on to state briefly the dangers which the Convention sought to avert by establishing a federal district—all of them dangers to the national government and to the federal scheme arising from the jurisdiction of a single state over the capital of all the states. Dangers arising from popular participation in the government are certainly not indicated.

After speaking of safeguarding the necessary independence of the national government, Madison cites the small size of the dis-

[1] Stoutenburgh *v.* Hennick, 129 U. S. 141; Metropolitan Railroad Company *v.* District of Columbia, 132 U. S. 1.

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trict as satisfying "every jealousy of an opposite nature." A hasty supporter of the present government might jump at the conclusion that Madison is here seeking to vindicate the suppression of popular government, but a close correlation of this sentence with the preceding one and a consideration of the purpose of *The Federalist* make such a view quite untenable. It is evident that the jealousy of an opposite nature is the apprehension of too great independence of the national government—an apprehension which the states might entertain if the federal government should control any large territory in those fields of jurisdiction normally left to the states. The exception which Madison seeks to vindicate is not an exception to the republican principle but an exception to the federal principle.

Madison's last sentence enumerates several safeguards which would preserve the rights both of the ceding states and of the people of the ceded district. This is the only instance where Madison seems to presuppose any limitation of popular government, but he most emphatically states that the people would have a republican local government. It is evident that Madison saw no reason for excluding the people from participation in the government, except the practical exigencies that might arise from the peculiar position assigned to Congress in giving it the powers of a state government.

The journal of the Constitutional Convention and Madison's arguments in *The Federalist* thus leave no room for doubt that the sole object of the anomalous position of the capital was the exclusion of the jurisdiction of any individual states; and that no suppression of popular government was intended except as a regrettable incident in the transfer of jurisdiction. There was, moreover, but a single reason—the possibility of the parochial spirit mentioned by President Taft—why the framers of the Constitution could have wished to exclude from power the people in the district; and they evidently did not think very seriously of that, as it is not once mentioned. A parochial spirit did seem to be present under the popular local government originally instituted by Congress, but, owing to the peculiar conditions existing at the time, this can scarcely be considered a failure of popular control.

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The United States Supreme Court has repeatedly held that the guarantees of civil rights in the constitution apply to all parts of the United States, including the incorporated territories and the District of Columbia.[1] The one general political right guaranteed by the Constitution—that of republican government—is specified as applying to states, and there is an obvious reason for excluding communities in what has been termed political infancy from the full enjoyment of this political right. The district, however, is not like a territory, a political infant, an incipient state not yet ready to enjoy full political rights; it is an area originally a part of a state and with a population more, rather than less, capable of self-government as a result of its peculiar position. There is nothing inherent in the position of a national capital that requires the suspension of self-government; suspension in any particular feature is merely an incidental practical expedient. Before it can be said that popular control should be withheld in any branch of the government, it must, therefore, be shown that popular control in that particular branch can not be practicably arranged for.

Control of local affairs

Madison's words in *The Federalist* should be sufficient to decide the question of local government overwhelmingly in favor of popular control, as far as the Constitution is concerned. It was indubitably the purpose of the Constitutional Convention that the national capital should be, administratively, an ordinary city, with a full-fledged municipal legislature controlling its own finances and all other proper subjects of municipal legislation, as well as the meager field commonly occupied by municipal ordinances. It is sometimes claimed that it would be an illegal delegation of power to give the people control of true legislation, as opposed to ordinances and regulations; but the United States Supreme Court[2] declared, in 1879, that "it is not open to reasonable doubt that Congress had power to invest the District Government with legislative authority"; and, moreover, any

[1] Callan *v.* Wilson, 127 U. S. 540; Capital Traction Company *v.* Hof, 174 U. S. 5.

[2] Welch *v.* Cook, 97 U. S. 542.

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such claim is obviously outweighed by Madison's use of the decisive term, "municipal legislature," and by the interpretation of those who first put the constitutional provision into operation. As a matter of fact, the local government originally instituted was, except perhaps for the first few years, more completely under popular control and freer from national participation than the systems proposed to-day, which almost invariably divide control between elected representatives of the people of the district and federal representatives who are to look after the important interests of the national government. In the early years, indeed, the municipality of Washington, and also the other governmental units outside of the actual capital city, were practically abandoned to their own devices. In view of all this it seems certain that, if the District of Columbia is to be retained as an appanage of the national government without the franchise even in local affairs, it must be on purely practical grounds: the Constitution requires no such condition of affairs.

Exercise of state functions

Turning to the matter of the state government functions, we find more difficulty in reaching a conclusion. The Constitution, both in itself and as expounded by Madison, would seem to contemplate, as the natural course, that Congress was to take over the duties of a state toward the capital and perform them directly; but since it is clear that the Constitutional Convention, having no time to work out the capital's governmental system in detail, left this task to Congress, there is no cause to accept this view as final if changing conditions have made some better plan possible of operation. Certainly the delegation of the powers of Congress would not endanger the purposes for which the federal district was instituted, as Congress would retain the ultimate authority; and only the detailed operation of the government under Congressional supervision need be given to the people in order to secure them actual self-government.

When Congress first assumed control over the district it followed the implication of the Constitution and exercised its state functions directly; but it was not long before some of its members felt the desirability of a change. Views of this na-

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ture were expressed by a number of representatives in February, 1803, when resolutions were brought before the House providing for the retrocession of the district to the states. Two reasons were advanced for the introduction of these resolutions; the business of legislating for the district was considered a burden upon Congress, and the withholding of the power from the people was accounted so great an injustice as to call for such strong characterizations as "tyranny" and "slavery." Yet, it must be remembered, the people of Washington and of the two other municipalities in the district at that time had practical autonomy in local affairs, except that (until the charter was changed in the next year) the mayor of Washington was appointed by the president. The belief that the people were unjustly treated, even when given control of local affairs, seemed to be general throughout the House; and the only apparent reasons for the rejection of the resolutions were their probable unconstitutionality and the possibility of an alteration in the form of government when the district should become more populous. The constitutionality of this alternative was, in turn, questioned by some of the supporters of the resolutions; but the House in general did not seem to share these doubts, and the proposal by Representative Andrew Gregg, of Pennsylvania, later a prominent member of the Senate, that a territorial legislature be established when conditions were favorable,[1] was quite warmly seconded by several members. A territorial legislature would, of course, have been simply a means of transferring the state functions to the representatives of the people.

In the message of President Monroe to Congress fifteen years later (November 16, 1818) we find another evidence of this same feeling. Though not a member of the Constitutional Convention, Monroe had been active in public affairs at that time and had taken a prominent part in the Virginia ratification convention. Consequently the following paragraph possesses considerable authority as well as much interest:

> The situation of this District, it is thought, requires the attention of Congress. By the Constitution, the power of legislation is exclusively

[1] *Annals of Congress*, House of Representatives, February 9, 1803.

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vested in the Congress of the United States. In the exercise of this power, in which the people have no participation, Congress legislate in all cases directly on the local concerns of the District. As this is a departure, for a special purpose, from the general principles of our system, it may merit consideration, whether an arrangement better adapted to the principles of our Government, and to the particular interests of the people, may not be devised, which will neither infringe the Constitution, nor affect the object which the provision in question was intended to secure. The growing population, already considerable,[1] and the increasing business of the District, which it is believed already interferes with the deliberations of Congress on great national concerns, furnish additional motives for recommending this subject for your consideration.

In 1871, when the population of the district had reached 130,000, or more than the several populations of three states of the Union, there was actually established a government combining municipal powers with a limited number of state functions; but the reasons for its institution were quite changed, and, moreover, such a large share in the government was given to federal appointees that the degree of self-government was actually reduced. This system was abolished in 1874, mainly, as was admitted at the time, because of the misgovernment of the appointive officials; and the present government has not even complete municipal powers.

In two instances,[2] the courts of the District of Columbia have declared that the delegation of state powers to the territorial government was unconstitutional on the ground that they were general legislative powers. The United States Supreme Court has never passed directly on this question, but this view is supported by the dictum in the case of Stoutenburgh *v.* Hennick,[3] where it is stated that Congress in creating the district government "could only authorize it to exercise municipal powers." These words, taken literally, certainly exclude state powers; but another and more liberal interpretation is possible. The purport of the decision was that Congress could not legally delegate and

[1] It was at that time about 30,000 in the ten-mile square.

[2] Roach *v.* VanRiswick, 4 MacArthur 171; Smith *v.* Olcott, 19 App. D. C. 61.

[3] 129 U. S. 141.

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the district could not legally exercise the power to regulate interstate commerce, because this was one of the *national* powers of Congress. In explaining the matter the court noted that the opposite extreme of *municipal* powers could be delegated, on the principle "that local affairs should be managed by local authorities, and general affairs by the central authority." If this statement is to be taken as supposing the existence of but two classes of authorities, state powers must be classed as general and hence must be exercised directly by the central authority. If, however, the terms used are to be taken as comparative instead of absolute, there may be three or even more classes, and it is true that state affairs should be managed by state or quasi-state[1] authorities. In such case Congress, which is not normally a state or quasi-state authority, could and should delegate such powers to the district, which is properly a quasi-state authority, though almost indistinguishably combined with a municipal authority. In such case, though we must admit that the court's dictum, as worded, declares the delegation of state functions illegal, we may contend that there was a very considerable element of inadvertency in its wording —enough, at least, to justify a consideration of the subject.

In a centralized government, the powers which we term state powers would undoubtedly be classed as "general" powers, but in a federal government, with three well-defined divisions of authority instead of two, the matter is less simple. For a state government, state powers may well be considered "general" powers, since they are its normal powers; but for a national government, its normal and hence "general" powers are national powers, and state powers are, in comparison, local. In the simplest and most natural interpretation of the term, the powers of Congress over the District of Columbia, unusual in their nature and restricted to a small area in their application, are scarcely powers over one of the "general" subjects of legislation; and it is hardly logical to take it for granted that the Constitutional Convention intended that these powers should not be delegated, merely because that was the obvious intention

[1] *E. g.* territorial.

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with regard to those powers for whose exercise Congress was brought into existence.

A parallel is very often, and quite logically, drawn between the district and the territories, though, of course, the two are in many respects quite different. The Constitution gives Congress "power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States."[1] The powers of Congress over the territories under this clause are certainly no less direct and exclusive than its powers over the national capital. The word "all" in this clause perfectly balances the word "exclusive" in the District of Columbia clause; and the term "rules and regulations" certainly implies as direct an authority in detailed matters as the term "legislation," if not, indeed, more direct. In the case of the territories, however, the exercise of the usual state functions has been conferred on the representatives of the people, except that Congress necessarily retains the seldom invoked rights to overrule the territorial legislatures and to exercise direct legislative control over any subject if it sees fit at any particular time so to do. The reason for this delegation of power is obvious, and for practical reasons no question is made of its constitutionality. Yet the powers which the Constitution gives Congress over the District of Columbia are identical, and the practical difficulties arising from their direct exercise differ only in degree from those which arise in the cases of the territories; the inconvenience growing out of the engrafting of state function on the national powers of Congress is not lessened, although it may be justified, by the peculiar interest of Congress in the District. The interpretation placed on the District of Columbia clause, like that placed on the territorial clause, should be, not the abstract and overliteral, but the practical and expedient interpretation; and, if Congress should see fit to transfer its state functions to a local body, it would scarcely seem broad-minded policy on the part of the courts to place any obstacles in the way through strict construction.

[1] Constitution, article iv, section 3, clause 2.

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Participation in national affairs

There is no room for doubt that the Constitution, without amendment, does not permit the participation of the district in national affairs; but there is, on the other hand, much cause for supposing that the Convention would have provided for it if a feasible method had presented itself. The Convention, however, could scarcely afford the time necessary for the solution of such a problem, and, moreover, it could not have been expected at such a critical juncture to tamper with its system of state representation. Consequently its members contented themselves with certain circumstances which seemed to lessen the injustice to the people of the district. Madison names three of these in *The Federalist:* the consent of the people to the cession, the "inducements of interest" to residence at the capital, and the participation in the original organization of the national government. At the time, these probably seemed satisfactory; but, now, more than a century later, only the second of the three holds good; the passage of time has destroyed the force of the others.

Although Madison does not mention it, the small size of the district was probably felt to be both a reason and an excuse for withholding representation in the national government. The framers of the Constitution no doubt had high hopes that the capital would be a large and important city, but this prospect was remote. It was scarcely feasible to accord representation in Congress to a population of about fifteen thousand, even though at that time (1800) the ratio for representatives was only 33,000. It was not until 1870 that the increasing population of the district reached the simultaneously increasing single ratio. Now, however, with but two-thirds of its original area, the District has a population well over the requirement for a single representative and, moreover, greater than the several populations of six states of the Union. It may be added that the close connection between the local and the national interests makes it especially desirable that the district should participate in national affairs, if only that its needs may be properly presented to the nation, for the national as well as for local benefit.

The project to represent the district in the national govern-

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ment is not new. Not only was representation in the House of Representatives by a territorial delegate proposed as early as the debate in the House in 1803, already cited, and actually put into practice, along with the territorial government above described, in the seventies, but several attempts have been made so to amend the Constitution as to give the inhabitants elective representation in Congress and participation in presidential elections.

It is interesting to note that, in three out of four Latin-American countries in which our plan of a special federal district has been adopted, the people of the federal districts are not deprived of their participation in national affairs. The city of Mexico, now under a government identical in most respects with the commission system in the District of Columbia, has the full quota of a state in the national Congress. In Brazil and Argentina, also, though not in Venezuela, the capital has its regular representatives. In each of these federations, it is true, the capital is the largest city of the country and, moreover, was in existence long before its selection as capital; but the District of Columbia is nevertheless of ample size and importance to be represented in the national councils. Apparently the only real difficulties are the problem of determining just how much representation would be equitable and the conservative reluctance to amend the Constitution; but of these the former is comparatively unimportant, and the latter should be overcome by the probability that this change would not really be contrary to the desires of the framers of the Constitution.

Conclusion

It seems reasonably certain, from the absence of contrary evidence, that the Constitutional Convention did not seek to deprive the people of the District of Columbia of their political privileges. The sole aim of that body was to secure the national government from state interference. In view of certain alleviating circumstances, more potent then than now, the Convention felt itself justified in sacrificing some of the political privileges of the people to the security of the national government; but certainly this sacrifice was anything but an end

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sought. It was found necessary to sacrifice participation in national affairs, since the machinery for it apparently could not be placed in operation under the peculiar plan whereby the capital was separated from the states; but the Convention certainly did not contemplate the irrevocable perpetuation of this sacrifice if some means of placing that machinery in operation should appear in later years under changed conditions. The case of the exercise of state functions is similar, except that a slavish perpetuation of the method originally deemed expedient was still less contemplated.

The matter of local government, however, is quite different. There was no apparent obstacle to the operation of local self-government, even under the peculiar system established for the capital, and consequently, as is amply shown by the interpretation of *The Federalist* and of the early Congresses, no anomaly whatever was here contemplated. It may be inquired: How, then, did the well-established idea of constitutional prohibition arise? In the early days of the capital the reproaches of "tyranny" and "slavery," occasioned by the denial to the district of anything like state government and by its exclusion from participation in national government, were frequently met by citing the Constitution, as was the case in the House of Representatives in 1803; and it is probable that an extension and perversion of this idea is the cause of the attempt to make the Constitution cover the additional "tyranny" and "slavery" of non-representative government in local affairs. But such an attempt involves the assertion that all the popular governments of the district, municipal as well as territorial, until the institution of the commission system in 1874, were unconstitutional; and in view of the conclusive sanction of the signers of the Constitution themselves such an assertion is obviously an absurdity. The constitutional argument for a "benevolent despotism" in local affairs is quite untenable, and that system must rest on purely practical arguments or fall.

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THE CONSTITUTION AND POLITICS OF THE BŒOTIAN LEAGUE

FROM ITS ORIGIN TO THE YEAR 387 B. C.

THE chief reason for this study is the new light thrown on the subject by the fragment of a Hellenica recently discovered in Oxyrrhynchus, Egypt.[1] The author, whose name is unknown to us but who must have composed his work between 387 and 346 B. C., shows an intimate and accurate acquaintance with Greek affairs in the period of which he treats. The work is a detailed history of Greece, beginning probably from the point at which that of Thucydides ends and continuing at least to the battle of Cnidos (394 B. C.).[2] The recovered fragment has to do merely with some of the events of 396–395, but refers incidentally to earlier time. It is only by way of digression that the author touches upon the federal constitution of Bœotia; but the information which he thus gives has rendered all modern views of the subject antiquated. For the purpose of bringing the new information into its proper connection with the facts already known and of offering a slight contribution, independently of the new source, to the earlier history of the League, the present study is made to extend over the entire development of the institution from its beginning to the year 387 B. C. For the time subsequent to this date the reader is referred to the article on Bœotia by F. Cauer.[3] The portion of history which forms the subject of this paper is divided for convenience into three periods.

[1] Oxyrrhynchus Papyri, vol. v (London, 1908), edited by B. P. Grenfell and A. S. Hunt.

[2] On the date, authorship and character of the work, see *op. cit.*, pp. 121 *et seq.*

[3] In Pauly-Wissowa, Real-Encyclopädie, vol. iii, pp. 637–663. Though this article is generally reliable, the author has made some serious mistakes in his use of coins, to which attention is called below. For information on the coinage I have depended, as have Cauer and the editors of the Oxyrrhynchus Hellenica, on B. V. Head, Catalogue of Greek Coins, vol. viii: Central Greece (London, 1884).

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I. *From the founding of the League to its temporary dissolution in 479 B. C.*

A. THE LEAGUE

Two facts bear on the date of its formation. The first is that the author of the Homeric catalogue of ships was acquainted with a league of most of the Bœotian states, which, according to his authority, furnished fifty ships for the expedition against Troy, whereas Orchomenos and Aspledon together furnished thirty.[1] This part of the Iliad is relatively late; it belongs to the time of the aristocracy rather than to that of the kingship. The second fact, closely harmonizing with the one given, is that the League itself was never ruled by kings.[2] It would be reasonable, accordingly, to assign its beginnings to the time shortly following the downfall of monarchy—approximately to 700 B. C.

Doubtless still earlier in origin was the Bœotian amphictyony, whose principal seat was "sacred Onchestos, Poseidon's bright grove."[3] Another general shrine was the temple of Itonian Athena, where the Bœotians gathered in assembly to celebrate the Pambœotia, perhaps to elect their representatives to the Delphic amphictyonic council, and to transact other religious business.[4] The historical connection between the amphictyony and the federal union has not been precisely determined. The one probably prepared the ground for the other; and certainly here as elsewhere the tie of religion reinforced the political association.

In this period a little light begins to be shed on the relations of the states to one another by the coinage. The earliest coins of the country are of the Æginetan standard, and the reason for this fact is to be sought in the close relation between Ægina and Orchomenos as members of the Calaurian amphictyony.

[1] Iliad, ii, 494–510.

[2] Only local kings are mentioned: *cf.* Strabo ix, 1, 7, C. 393; Ephorus, Frag. 25; Plutarch, Cimon, 1.

[3] Iliad, ii, 506; Homeric Hymn to Apollo, 52; to Hermes, 88, 190. Strabo ix, 2, 33, C 412, is authority for its being the seat of the amphictyony.

[4] Strabo ix, 2, 29; Pausanias ix, 34, 1; *cf.* Polybius iv, 3; ix, 34. The mythical Amphictyon mentioned in this connection (*cf.* the Athenian Amphictyon) may indicate a relation to the Delphic quite as well as to the Bœotian amphictyony.

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Probably, therefore, the first Bœotian coins were struck at Orchomenos, whence the standard and type extended to the other states. The earliest pieces of which the dates have been approximately determined belong to 600–550 B. C. The obverse shows the Bœotian shield—the "false-notched" oval, closely related to the Attic Dipylon type.[1] For this early period no coins of the type can be proved to belong to Orchomenos, whereas Haliartos and Tanagra are known to have used the design. Many, however, like those of early Ægina and of early Greek cities in general, bear no city initials, and some of this class may have been Orchomenian as well as Theban.[2] The coinage of the towns was so similar that we must assume a federal regulation; but the fact of their issue by individual cities proves that Thebes had not yet become dominant. It would accord well with the little we know of this matter to suppose that, when the federal government adopted the buckler as a design for its coin, Orchomenos dropped it from her own currency, preferring a distinct type.[3] The divergence of usage, however explained, indicates that this city stood in a peculiar relation to the union. Tradition, confirmed by Mycenæan archæology, makes Orchomenos the wealthiest and most powerful city of Bœotia.[4] It is said that in early time Thebes always paid tribute to her.[5] Probably other Bœotian cities were once in the same dependent condition. It would not be difficult to believe, therefore, that the union was formed under the leadership of Thebes to secure the independence of Bœotia. The author of the catalogue of ships knows of but one community, Aspledon, about twenty stadia distant,[6] which was still dependent on Orchomenos. At that time the latter city was in

[1] Head's conjecture (Greek Coins, vol. viii, p. xxxvi), that this form of buckler had its origin in Thebes, was made before its historical connection had been pointed out. *Cf.* G. Lippold, Münchener archäologische Studien (1909), pp. 410 *et seq.*

[2] This explanation seems more satisfactory than that of Head, *op. cit.*, p. xxxvii, who assigns the latter class of coins to Thebes. For the close dependence of the Orchomenian coinage on that of Ægina, dating perhaps from the seventh century B. C., see Hill, Historical Greek Coins, pp. 4–7. [3] Head, *op. cit.*, p. 52.

[4] *Cf.* Iliad, ii, 511; ix, 381; Odyssey, xi, 284, 459; Hesiod, Eœæ, frag. 144.4 (Rzach). [5] Strabo ix, 2, 40. [6] *Ibid.* ix, 2, 41.

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a position to make an alliance with the union as a whole on a practically equal footing; and doubtless for a long time after entering the League she enjoyed exceptional advantages. From 550 B. C. to the great war with Persia, coins were struck by Acræphium, Coroneia, Haliartos, Mycalessos, Orchomenos, Pharæ, Tanagra and Thebes—Orchomenos being still the only city which does not have the shield.[1] These seven must have been the independent members of the League at that time. The chief federal magistrates in this period, as in later time, were the bœotarchs. We are not informed, however, as to their number or their functions.[2]

Thebes was growing powerful and was beginning to encroach on the rights of individual states. It was but natural that a city in her position should attempt to absorb her neighbors, so as to convert the League into a great state, in some such way as Athens and Lacedæmon had developed. The first recorded attempt at this form of aggrandizement was made on Platæa toward the end of the sixth century.[3] But unfortunately for the Theban policy of annexation, the Platæans found sympathizers among the more powerful states of Greece. Athens gave the aggrieved city the desired alliance and protection and thus helped to bring about what Freeman[4] has termed the first known secession from a federal union. The reason offered by the seceders for the action was their desire to escape from Theban oppression. On this occasion the Corinthians, called to arbitrate between the contending parties, declared that the Thebans should refrain from molesting those who did not wish to be reckoned among the Bœotians.[5] On such a principle no Greek federation could be permanent.[6] In fact, under the conditions then prevailing, a territory so extensive as Bœotia could

[1] Head, *op. cit.*, p. xxxvii.

[2] Herodotus ix, 15, is the first to mention them. He states that they coöperated with Mardonius and furnished him with guides.

[3] Herodotus vi, 108; Thucydides iii, 55, 66.

[4] History of Federal Government, vol. i, p. 166.

[5] Herodotus vi, 108.

[6] As the Thebans were allies of Pisistratos (Herodotus ix, 61; Aristotle, Constitution of Athens, 15), the revolt of Platæa to Athens must have taken place after the downfall of the tyrants in 510.

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hardly be united under a strong government without the application of force and the temporary infliction of injustice on localities. The outcome was a severe blow to Bœotia and to Thebes; the former yielded to Athens not only Platæa but also, at about the same time,[1] Hysiæ and Eleutheræ, whereas Thebes lost prestige and was deprived of considerable territory of her own. Probably these circumstances had much to do with determining the attitude of Bœotia toward the Persians in the attempt they soon afterward made to conquer Greece.

B. CONSTITUTIONAL AND POLITICAL HISTORY OF THE CITIES

Originally the individual states were monarchical.[2] In case a king was incompetent, through age or for any other cause, to command the army, it was customary for the community in time of war to elect a general. According to tradition, which may contain a grain of truth, the Thebans once chose Peneleos archon to conduct an expedition because their king was not yet old enough for the duty.[3] This story doubtless embodies a faint memory of the beginning of the republic. After Peneleos was slain, they chose as his successor Tisamenos, the rightful heir. Then for three generations they elected kings from the house of Peneleos, the last being Xanthos. He was killed by treachery in single combat, whereupon the Thebans resolved to intrust their government to several magistrates and no longer to let everything depend on one man.[4]

One of the highest offices in Thebes, as at Athens, during the early republic was the archonship. This magistrate soon de-

[1] Pausanias ix, 2, 2.

[2] For the mythical kings of Thebes, see Pausanias ix, 5; of Orchomenos, Strabo ix, 2, 40, C. 414 and Pausanias ix, 34, 10; of Platæa, Pausanias ix, 1, 1.

[3] Pausanias ix, 5, 15. Reference here may be to the office of archon, which later declined into a priesthood; but the military function points rather to the polemarchy. At Athens, too, the polemarchy was the first great office to be instituted in the transition from kingship to republic; Aristotle, Constitution of Athens, 3.

[4] Pausanias *loc. cit.* There are some points of resemblance between this story and that of the end of the Athenian kingship. The aristocratic magistrates are indiscriminately called *βασιλεῖς* by Hesiod, just as the inferior chiefs of the kingly period are so termed by Homer.

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clined in importance till he became a mere priest.[1] The political power went to the three polemarchs.[2] Their number may have corresponded to a tripartite division of the state.[3] They commanded the army and were the chief executives. It is known that in the fourth century they still had power to arrest anyone whom they thought deserving of the death penalty,[4] and that in Orchomenos they had financial duties and presided over public meetings of the citizens.[5] As no trace of a popular assembly can be found before the fourth century, we must conclude that the magistrates were appointed by the council (βουλή), which represented the oligarchy of this early time.

The nobles, who monopolized the political power, were all large landowners, as elsewhere in early Greece. It was in this period that Philolaos, a member of the ruling family of the Bacchiadæ at Corinth, left his native city to spend the remainder of his life at Thebes. The oligarchs of the latter state engaged him to draw up laws for them on various subjects, including inheritance and adoption.[6] Two deductions may safely be drawn relative to his legislation: (1) that he patterned his laws after those of his native city; (2) that they favored the nobles. His primary object, says Aristotle, was to maintain unchanged the number of holdings. Large tracts of land in Greece, belonging originally to the state or to its component societies, were on the downfall of kingship seized by the nobles.[7] While

[1] Plutarch, De genio Socratis, 31. It is by no means unlikely that the Athenians adopted the office from one of the Bœotian towns.

[2] *Cf.* Gilbert, Griechische Staatsaltertümer, vol. ii, p. 61, n. 4.

[3] Two tribes at Orchomenos are referred to King Eteocles as author by Pausanias ix, 34, 10. The total number was probably greater. But Szanto, Ausgewählte Abhandlungen, p. 250, doubts the existence of these tribes, or at most regards them as exceptional. He holds that in general the Bœotian cities did not have a tribal organization.

[4] Xenophon, Hellenica, v, 2, 30.

[5] *Cf.* Gilbert, *op. cit.*, vol. ii, p. 62, n. 2. The Athenian polemarch had a very different history because of the fact that he soon came to be limited by a board of generals. The latter seem to have no parallel in early Bœotia.

[6] Aristotle, Politics, ii, 12, 6 *et seq.*, p. 1274.

[7] *Cf.* the conduct of the ravenous suitors of Penelope. They may be taken as an illustration of the aristocratic hunger for the possessions of the absent or dethroned king. On the insecurity of inheritance see, further, Odyssey, iv, 756 *et seq.*, vii, 149 *et seq.*

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the idea of property in land was still vague and the dominance of the nobility not as yet fully acknowledged, the common people naturally strove for a share in this benefit. In opposition to their efforts the laws of Philolaos aimed to maintain the agrarian *status quo* and to render property rights more determinate. At about the same time the archonship was instituted at Athens for the same purpose. This magistrate's edict, "whatever anyone possesses when I enter office, that he shall continue to possess to the end of my term," repeated annually upon the assumption of his official duties,[1] implies a prevailing instability of property rights and attempts to correct the defect, as circumstances clearly indicate, in the interests of the ruling class. Agrarian conditions in Bœotia and Attica during the seventh century were similar. The former country seems on the whole to have been more advanced in settled life and general culture than the latter; so that if we assume a mutual borrowing of ideas and customs, we must regard the Bœotians as the chief creditors. Another law of the same period, which we may safely assign to Philolaos, excluded from office all who were engaged in industrial or mercantile occupations.[2]

The oligarchic magistrate exercised his judicial power most unmercifully. He was a notorious swallower of bribes, whose decisions were crooked.[3] Hesiod[4] represents him as a hawk and the plain man under prosecution before his court as the nightingale. The bird of prey gloats over his power to eat or to let go his victim, loudly boasting that might is the only law.[5] There is no wonder that Hesiod earnestly warns the peasant against the dangers of borrowing; for insolvent debtors were certainly treated with no less severity in Bœotia than in Attica during the same period.[6]

[1] Aristotle, Constitution of Athens, lvi, 2: Καὶ ὁ μὲν ἀρχων εὐθὺς εἰσελθὼν πρῶτον μὲν κηρύττει δσα τις εἶχον πρὶν αὐτοῦ εἰσελθεῖν εἰς τὴν ἀρχήν, ταῦτ' ἔχειν καὶ κρατεῖν μέχρι ἀρχῆς τέλους.

[2] Aristotle, Politics, iii, 5, 4, p. 1278, a, 25: Ἐν Θήβαις δὲ νόμος ἦν τὸν δέκα ἐτῶν μὴ ἀπεσχημένον τῆς ἀγορᾶς μὴ μετέχειν ἀρχῆς; *cf.* iv, 7, 5, p. 1321, a, 28. The exemption from the law after ten years of retirement from business was probably due to an amendment; see *infra*, p. 282 n. 1.

[3] Hesiod, Works and Days, 250.

[4] *Ibid.* 212 *et seq.* See in general, 202–273.

[5] *Ibid.* 394 *et seq.*

[6] In far later time they were publicly disgraced in the market-place; Nicolaus of Damascus, frag. 113, in Müller, Fragmenta Historicorum Græcorum, vol. iii, p. 458.

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From the beginning four or five families in Thebes surpassed all the others in influence.[1] The oligarchic circle gradually narrowed to a clique (*δυναστεία*) of a few men, who ruled despotically.[2] The cowed masses meekly followed their leaders, not of their own free will but because they had long been accustomed to servitude.[3] According to the later account of the Thebans, the responsibility for the disloyalty of their city in the war with Persia rested wholly with these men, who sided with the enemies of Greece to further their own interests[4]; whereas the leaders themselves asserted that they adopted this policy merely as the representatives of the state.[5] There is this much truth in the latter view, that, as Platæa and Athens stood together against Persia,[6] Thebes thought it to her advantage to take the opposite side, in the hope of winning back what she had lost. The battle of Platæa brought the governing clique at Thebes to a sudden end. One of its members escaped, but the others were surrendered by the Thebans to Pausanias, who put them to death without a trial.[7]

II. *From the dissolution of the League in 479 to its restoration in 447 B. C.*

A. RELATIONS AMONG THE STATES

Thebes immediately lost her leadership of the union.[8] Her coins still bore the shield, but she dropped from them the general Bœotian name, leaving them either without an inscription or merely with her own initials, Θ E.[9] Head[10] calls atten-

[1] Four families boasted of their descent from the Spartoi, contemporaries of Cadmus, and a fifth claimed equal age and honor; Pausanias ix, 5, 3.

[2] Thucydides iii, 62, 3.

[3] Plutarch, Aristeides, 18.

[4] Thucydides iii, 62, 3.

[5] Herodotus ix, 87.

[6] The Thespians, too, were loyal to Greece, whereas most of the other Bœotians submitted to the king (Herodotus vii, 132; Diodorus xi, 3, 2) and fought on his side at Platæa; Herodotus viii, 34. Afterward, feeling ashamed of their conduct, the Bœotians invented the story that they had marched 10,500 strong under four bœotarchs against the enemy; Pausanias x, 20, 3.

[7] Herodotus ix, 86–88; Diodorus xi, 33, 4. [8] Diodorus xi, 81, 1; Justin iii, 6, 10.

[9] Head, Greek Coins, vol. viii, pp. xxxviii, 69 *et seq.*

[10] *Ibid.* pp. xxxviii, 60. Cauer, in Pauly-Wissowa, Real-Encyclopädie, vol. iii, p. 645, has strangely misstated the facts. The coins of Thebes and Tanagra were alike in bearing the federal type but differed essentially in inscription.

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tion to the interesting fact that in this period the coins of Tanagra alone bear the Bœotian name, and he cleverly infers therefrom that this city now aspired to the headship of the union. Although Tanagra may have cherished the ambition, she certainly failed to realize it; in fact through most of the period the union was non-existent. The Lacedæmonians, who had done most to bring about its dissolution, now aimed to oust the Bœotians and other disloyal Greeks from the Delphic amphictyony; but their attempt was frustrated by Themistocles (about 475 B. C.).[1] His policy shows that the Athenians were taking a warm interest in the protection of Bœotia from further degradation; but it was certainly against their interest that the League should be revived. The attempt of Tanagra to reform it under her own leadership, if her coinage should be so interpreted, was likely to bring upon her the hostility of Athens.[2]

Circumstances soon wrought a complete change in the relations between Bœotia, Athens, and Sparta. The growing maritime empire of Athens awakened the fear of Lacedæmon, and the latter began accordingly to seek friends in central Greece among the states she had formerly despised. Meanwhile the Thebans, who had been humiliated because of their disloyalty in the Persian war, were casting about for means whereby they might recover their earlier power and reputation.[3] As the former members of the League would have nothing to do with them, they besought the Lacedæmonians to aid them in regaining the hegemony over Bœotia, promising in return for this favor to wage war with their own forces against the Athenians, that the Lacedæmonians might no longer need to lead forth their infantry beyond the borders of Peloponnesus.[4] The bargain was struck. According to Diodorus the Lacedæmonians, who had an army at hand,[5] enlarged the walls of Thebes and

[1] Plutarch, Themistocles, 20.

[2] Head, *loc. cit.*, is therefore wrong in supposing that such a Tanagran policy would receive encouragement from Athens. After the victory of Œnophyta, Tanagra was the first to suffer punishment (Thucydides i, 108)—doubtless for treachery, though with our scant knowledge we should not be warranted in drawing more specific inferences regarding the relations between that city and Athens.

[3] Diodorus xi, 81, 1. [4] *Ibid.*, § 2. [5] Thucydides i, 107.

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compelled the other Bœotians to submit to her.[1] Some may have been forcibly removed from their homes to swell the population of the dominant city. The battle of Tanagra, fought with the Athenians in 457, was however but a temporary victory for the Theban cause. Two months later[2] the Athenians marched forth under Myronides and defeated the Bœotians at Œnophyta. The victors were masters of all Bœotia. They dismantled the walls of Tanagra[3] and took possession of all the cities with the exception of Thebes.[4] This great success resulted, not from the battle alone, but largely from factional strife in the cities.[5]

In acting thus the Athenians felt that they were liberating Bœotia from servitude to Thebes, and that they were righting a further wrong in restoring those who had been banished from the various cities.[6] Evidently these exiles were opposed to Theban hegemony and friendly to Athens. The leaders of the opposite faction were banished.[7] The cities now came into alliance with Athens; they acknowledged her hegemony and performed military service for her,[8] under what conditions is unknown. Thucydides looked upon them as in some degree subject to Athens.[9] It was natural, then, that the Thebans should speak of the Athenian success as a conquest and of the subsequent Bœotian victory at Coroneia as a liberation.[10]

The status of the cities is illustrated by the coinage, which Head[11] assigns to this decade of Athenian supremacy (457–447

[1] Diodorus xi, 81, 3. On the extension of the walls, see Wilamowitz-Möllendorff, in *Hermes*, vol. xxvi (1891), pp. 191 *et seq.* It is possible, however, that this enlargement belongs to a later date; see *infra*, p. 293, n. 4.

[2] About September, 457; Busolt, Griechische Geschichte, vol. iii, p. 319. For the battle, see Thucydides i, 108; Diodorus xi, 82; Pausanias i, 29, 9; Polyænus i, 35.

[3] Thucydides i, 108, 3.

[4] Diodorus xi, 83, 1.

[5] Thucydides iii, 62, 5; iv, 92, 6; *cf.* Pericles, in Aristotle, Rhetoric, iii, 4, p. 1407 a.

[6] Plato, Menexenus, xiii, p. 242 b; *cf.* Alcibiades, i, p. 112 c.

[7] Thucydides i, 113, 4, speaks of their return after the battle of Coroneia.

[8] *Ibid.* i, 111, 1. They are here spoken of as ξύμμαχοι.

[9] As may be inferred from his statement that the Athenian defeat at Coroneia left them αὐτόνομοι; i, 113, 4.

[10] *Ibid.* iii, 62, 5.

[11] Greek Coins, vol. viii, p. xxxix.

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B. C.). Acræphium, Coroneia, Haliartos, Tanagra and Thebes struck coins, all bearing on the obverse the Bœotian shield but lacking the Bœotian name. On the reverse the several cities stamped their individual types—a cantharos, a gorgoneion *etc.*—with an abbreviation of the city name.[1] The five states mentioned by Head were among the seven independent members of the union as it had been composed in the earlier period. The continuance of the shield was due to force of habit or, at most, to a theoretical survival of the union, whereas the individual devices of the cities are an expression of the separatism upheld by the factions then dominant and encouraged by the Athenians.

B. THE POLITICS OF THE STATES

In our study of the politics of the Bœotian cities of this decade we meet with an interesting problem. In the opinion of Busolt,[2] Thebes was under democratic control at the time when she called the Lacedæmonians to aid her in the recovery of her supremacy. He believes that this party had come into power after the battle of Platæa. His theory assumes the oligarchs to have been generally supreme in the other Bœotian cities, but to have given way to democracies under Spartan influence. When Athens intervened, it was accordingly in support of the Bœotian oligarchs. She put down the democratic governments and restored the aristocratic exiles. But a revolution soon afterward took place in Thebes. The oligarchs got control, and at about the same time the oligarchic factions in the various cities began to oppress the commons and, turning their backs upon Athens, sought friendly relations with Thebes. Then the Athenians, siding with the democrats in the cities, drove the oligarchs into exile. The whole theory is got up to explain a passage in the pseudo-Xenophontic treatise on the Athenian constitution:[3] "As often as they (the Athenians) have attempted to choose the side of the aristocrats, it has proved a disadvantage to them;

[1] Here again Cauer, *loc. cit.*, p. 645, is wrong in saying that these coins lacked the federal arms.

[2] Griechische Geschichte, vol. iii, p. 320 and n. 3.

[3] III, ii: *Ὁποσάκις δ' ἐπεχείρησαν αἱρεῖσθαι τοὺς βελτίστους, οὐ συνήνεγκεν αὐτοῖς, ἀλλ' ἐντὸς ὀλίγου χρόνου ὁ δῆμος ἐδούλευσεν· ὁ μὲν ἐν Βοιωτοῖς.*

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and within a short time the demos, for instance in Bœotia, has fallen into slavery."

Although no part of the theory is absolutely impossible, it is as a whole so unlikely that strong evidence would be necessary to induce us to accept it. In the first place it is wholly improbable that after the battle of Platæa the Lacedæmonians, who were masters of the situation, permitted the setting-up of a government in Thebes which Aristotle could describe as democratic. It would seem strange, too, that Thebes should be democratic while all the other Bœotian cities were oligarchic, and that Sparta should be supporting democracy and Athens at the same time aristocracy. If Athens found the democracy established in all the Bœotian towns and the oligarchs in exile, why should she recall the latter? Would they be more inclined to submit to her than to Thebes? And when Thebes afterward set up an oligarchy, why should Athens forthwith espouse the cause of democracy and send the recently restored oligarchs back into exile? Busolt has not answered these questions. He and those of his opinion take too much trouble to explain the passage in pseudo-Xenophon above quoted. If the Athenians favored oligarchy in a single city, it would have sufficed for that writer's purpose.

The following sketch of party relations during the period seems more reasonable. When after the battle of Platæa the Lacedæmonians overthrew the cabal (*δυναστεία*) which governed Thebes, they set up n its place a moderate oligarchy—the *ὀλιγαρχία ἰσόνομος* of which the Thebans afterward boasted.[1] The other Bœotian cities may have varied in constitution, but the prevailing form was doubtless also oligarchic. Neither democrats nor oligarchs willingly submitted to Thebes. When the Lacedæmonians interfered in the interest of the latter, 457 B. C., it was to place in office in the various states men who were willing to follow Theban leadership. These persons usually constituted an oligarchy, though they could not have been iden-

[1] Thucydides iii, 62, 5. Perhaps at this time the law of Philolaos on qualifications for office was so amended as to admit those who had ceased for ten years from industrial and mercantile pursuits; Aristotle, Politics, iii, 5, 4, p. 1278 a, 25; *cf. supra*, p. 277, n. 2.

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tical with the former rulers of the cities. In general this revolution consisted in the substitution of one oligarchic faction for another. Those who refused to submit to the leadership of Thebes, whether oligarchs or democrats, were sent into exile. The Athenian victory at Œnophyta everywhere encouraged the democrats to seize the government. This change of party took place in Thebes[1] and in most or all of the Bœotian cities. Athens now banished those who opposed her leadership—mainly the oligarchic factions[2] set up by Lacedæmon—and recalled from exile those whom the Lacedæmonians had banished. They were restored, not necessarily to power, but to their homes and civil rights. Although Athens favored democracy, one or two states that came under her hegemony may have been oligarchies and have continued in this condition, or may have been changed to oligarchies by the return of the exiles. Soon afterward the democracy at Thebes was overthrown[3]; whereupon the one or two oligarchies, favored or tolerated by Athens, sided with Thebes and began to treat the commons like slaves. This simple, direct interpretation of the few known facts is offered as preferable to the far-fetched theory of Busolt.

The supremacy of Athens lasted ten years (457–447 B. C.). Exiles from Bœotia and Eubœa, to whom were added some Locrians, returned in large numbers and seized Orchomenos, Chæroneia and certain other places. The fact that they were oligarchs is well known.[4] The Athenians made insufficient provisions for meeting this emergency. Tolmides, their general, was overthrown and killed at Coroneia, and most of his soldiers were either slain or taken captive. To secure the release of the prisoners Pericles agreed to evacuate all Bœotia[5] with the excep-

[1] We are informed by Aristotle, Politics, v, 3, p. 1302 b, 25, that there was a democracy in Thebes after the battle of Œnophyta, though he does not state when it was established.

[2] On the political character of these exiles, see *infra*, p. 286, n. 5.

[3] Aristotle, Politics, v, 3, p. 1302 b, 25, states that the change resulted from the contempt in which the well-to-do held the license and anarchy of democratic rule.

[4] Thucydides i, 113, 2. Their associates, the Eubœans, certainly were; and the governments which they established on their return were oligarchic.

[5] *Ibid.* i, 113 (*cf.* iii, 62; iv, 92); Diodorus xii, 6; Plutarch, Pericles, 18; Pausanias i, 27, 5.

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tion of Platæa.[1] The victorious party regarded Coroneia as the battle which won the freedom of Bœotia.[2] The victors began to despise Athens and to look upon themselves as superior in arms.[3]

III. *From the restoration of the League in 447 to its dissolution after the treaty of Antalcidas, 387 B. C.*

A. THE LEAGUE

The victory of Coroneia, gained by the returning exiles and their friends from neighboring states, assured the cities autonomy under oligarchic constitutions. Those who were opposed to that form of government were banished.[4] Though, according to the sources, Thebes could have had but a minor part in the battle, she claimed for herself the chief credit for the success[5] and proceeded accordingly to restore the League and to knit it more firmly together under her own leadership. About this time the coinage of the other states seems to come to an abrupt end, whereas "we now have a plentiful issue of Theban staters bearing various types, mainly representations of Herakles, of great artistic merit."[6] Though they continue to bear the shield of the League, they are all inscribed with the name of Thebes. In other words, the leading city now declared her intention to merge the League in the state of Thebes. Whether she would treat the Bœotians as *periœci* or as Thebans seems to have been left to future events to determine. Following out this plan, the federal government required the members of the League to adopt uniform constitutions—a condition which doubtless had already been partially attained by voluntary imitation. The relation of the states to the central authority was regulated, too, as we afterward find it. The acquisition of

[1] Thucydides ii, 2, 1; iii, 55, 3.

[2] *Ibid.* iii, 62, 5.

[3] Xenophon, Memorabilia, iii, 5, 4; *cf.* Diodorus xii, 7.

[4] Democratic exiles from Thebes and Orchomenos were coöperating most actively with Athens in 424 for the overthrow of Thebes and oligarchy; Thucydides iv, 76. Many Orchomenian exiles found a refuge in Athens; *infra*, p. 286, n. 5.

[5] Thucydides iii, 67, 3; iv, 92, 6.

[6] Head, Greek Coins, vol. viii, p. xxxix and plate xii, 1–8. There are no Bœotian coins excepting those of Thebes in the period 447–395 B. C.; *ibid.*, p. ix.

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Platæa in 427 greatly strengthened the position of Thebes, which came into direct control of the annexed territory and of that part of the population which remained undisturbed by the conquest.

There were now ten members of the League. The close correspondence between the conditions of 424, as represented by Thucydides,[1] and those of 395, as described in the newly discovered Oxyrrhynchus Hellenica,[2] proves a general continuity of organization during the period. The relation of the states to the central government was peculiar. Eleven units of representation were distributed among these cities, according to their relative importance. Each unit was represented in the government of the union by a bœotarch. Probably at the beginning of the period there were but nine, increased to eleven by the acquisition of Platæa. For the year 424 the arrangement of forces at the battle of Delion shows the following distribution of units[3]:

	UNITS		CITIES
Right Wing	Two	for	Thebes
	Two	for	Platæa with her annexed communities, acquired by the League and added to Thebes in 427
Center . .	One	for	Haliartos, Coroneia and Copæ
	One	for	the rest who dwell about Lake Copais, including Acræphium
Left Wing.	Two	for	Thespiæ with annexed communities
	One	for	Tanagra
	One	for	Orchomenos with Chæroneia[4] (and Hysiæ ?)

The condition of communities described as "annexed" in the table above was somewhat like that of an Attic deme; but from their former independence they seem to have retained greater individuality. Those of the inhabitants who willingly submitted became citizens of the state to which they were joined[5]; the rest

[1] IV, 93, 4. [2] XI, 3. [3] Thucydides iv, 93, 4. [4] *Ibid.* iv, 76, 3.

[5] Sufficient proof is afforded by the expression τῶν ἀλλων χωρίων τῶν πρότερον μὲν ἐκείνοις (the Platæans) συμπολιτευομένων, τότε δὲ συντελούντων εἰς τὰς Θήβας (Ox. Hell. xi, 3), descriptive of the relations of certain communities to Platæa and of their transfer to Thebes.

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were killed, banished, or perhaps in some cases reduced to the status of *periœci*.

In this battle the Thespians, who were on the left wing, lost a great number of their best troops. Taking advantage of their misfortune, the Thebans, who had long plotted to destroy their walls, now carried this purpose into effect (423).[1] That it was also their wish to annex this state can hardly be doubted; but for the time they contented themselves with placing philo-Thebans in office in the offending city, and at the same time they probably made the government more strictly oligarchic. In the summer of 414 the popular party at Thespiæ, feeling oppressed, attempted by force to overthrow the new régime; but the Thebans came to the rescue and put down the insurrection. Some of the rebels were taken; others escaped to Athens.[2] Thespiæ showed remarkable elasticity in recovering from her losses and degradation, for we find her in 395 occupying as favorable a place in the League as in 424.

A state which Thebes feared quite as much as Thespiæ was Orchomenos. Democratic exiles from this city had been most active in coöperating with the Athenians to bring about the overthrow of Thebes and of oligarchy.[3] Some were ready to deliver to Athens the town of Chæroneia, which then belonged to Orchomenos. After the victory of Delion, Thebes proceeded to punish and to weaken her ancient rival. Chæroneia was taken from the latter, made an independent *polis* and associated with Acræphium. Copæ, previously associated with Haliartos, was also transferred to this group.[4] The democrats of Orchomenos remained in exile;[5] but the place of the city suffered no deterioration. In 419 the League acquired Heracleia, which

[1] Thucydides iv, 133. [2] *Ibid.* vi, 95. [3] *Ibid.* iv, 76, 3.

[4] These changes took place before 395; Ox. Hell. xii, 2.

[5] An inscription containing several decrees in honor of Potamodoros, leader of emigrants from Orchomenos to Athens, is edited and commented on by U. Köhler, in *Hermes*, vol. xxxi (1896), pp. 137 *et seq.* One belongs to the spring of 423, in the archonship of Isarchos (Thucydides iv, 118). Potamodoros was granted several favors and a donation of 500 drachmas from the state. Corpus inscriptionum Atticarum, vol. ii, 21, proves that this family were the *πρόξενοι* of Athens for many generations. The last mentioned reference is to a decree of the year 412–411, passed in honor of Eurytion, son of Potamodoros. Eurytion was in Athens at the time.

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had previously been occupied by a Lacedæmonian garrison. The annexation gave offence to Sparta,[1] whose friendship for Thebes was henceforth mixed with jealousy.

In 395 B. C. the representation of the states in the federal government was as follows: Two units belonged to Thebes; two to Platæa, with Scolos, Erythræ, Scaphæ and the other towns (*χωρία*) which in earlier time had formed a part (*συμπολιτευομένων*) of the Platæan *polis*, but which now belonged (*συντελούντων*) to Thebes; two to Orchomenos with Hysiæ; two to Thespiæ with Eutresis and Thisbæ; one to Tanagra; one to Haliartos, Lebedeia and Coroneia, each furnishing one bœotarch in turn; and one to Acræphium, Copæ and Chæroneia, which in the same way were represented by one bœotarch.[2]

The Oxyrrhynchus Hellenica has not only made clear the principle of representation but has also settled the vexed question as to the number of the bœotarchs. A statement of Thucydides[3] relative to these officials—"Whereas the rest of the bœotarchs, who are eleven in number, objected to giving battle, . . . Pagondas, . . . who together with Arianthidas . . . was bœotarch of the Thebans, . . . persuaded . . ."—has been interpreted to mean that there were eleven of these magistrates for the rest of the Bœotians in addition to those of Thebes,[4] making thirteen in all. Poppo[5] maintained, on the contrary, that Thucydides intended to give the total number of bœotarchs. A more serious problem concerning the number was raised by Wilamowitz-Möllendorff.[6] Assuming that Thucydides intended to give the total number, but finding a seeming disagreement

[1] Thucydides v, 52.

[2] Ox. Hell. xii, 2.

[3] IV, 91, 1: *Τῶν ἄλλων Βοιωταρχῶν, οἱ εἰσιν ἕνδεκα, οὐ ξυνεπαινούντων μάχεσθαι . . . Παγώνδας ὁ Αἰολάδου, Βοιωταρχῶν ἐκ Θηβῶν μετ' Ἀριανθίδου τοῦ Λυσιμαχίδου . . . ἔπειθε κ.τ.λ.*

[4] Two bœotarchs for Thebes are mentioned in connection with the surprise of Platæa in 431; Thucydides ii, 2, 1. Another passage (vii, 30, 3) proves merely that Thebes had more than one. After the acquisition of Platæa Thebes had the appointment of four bœotarchs, two for herself and two for the annexed communities; Ox. Hell. xii, 2.

[5] *Ad loc. cit.* He takes as evidence the present tense of the verb *εἰσί* and the scholia *ad* ii, 2.

[6] In *Hermes*, vol. viii (1874), p. 440.

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between his statement and the fact that there were, as he supposed, but seven members of the union, he concluded the number eleven to be a copyist's error for seven, and his interpretation has generally been accepted.[1] The newly-discovered papyrus removes all doubt from the number eleven, and leaves the unfortunate conjecture of Wilamowitz-Möllendorff to serve as a warning against the arbitrary emendation of texts.

As the chief magistrates of the union,[2] the bœotarchs commanded the army and formed a council of war. On the eve of the battle of Delion a majority opposed a trial of arms with Athens; but Pagondas, a bœotarch from Thebes—the other being absent—called the soldiers before him in successive divisions and exhorted them to fight. Thucydides merely remarks that he had the chief command (*ἡγεμονίας οὔσης αὐτοῦ*), giving no hint of a rotation of the hegemony among the bœotarchs.[3] It seems highly probable, indeed, that the leadership in war was vested permanently in Thebes, just as Sparta always exercised it in the Peloponnesian League and Athens in her confederacy and empire. The very circumstance that Pagondas overrode the decision of the council of war and appealed directly to the soldiers is evidence of an arbitrary, high-handed management of affairs on the part of Thebes which precludes the principle of rotation in command and of perfect federal equality in general.

Acting as a board, the bœotarchs also represented the union in foreign relations. They received envoys from other states and made provisional arrangements with them for alliances. But before definitely concluding treaties they had to submit the proposals to their respective cities, to be accepted or rejected by each, through the decision of the four councils described

[1] *Cf.* Lolling, in Mitteilungen des deutschen archäologischen Institutes in Athen, vol. iii (1878), p. 89; Busolt, Griechische Geschichte, vol. i, p. 258, n. 1; Cauer, in Pauly-Wissowa, Real-Encyclopädie, vol. iii, p. 647.

[2] *Cf.* Plutarch, Praecepta gerundae rei publicae, 17 Freeman, History of Federal Government, vol. i, p. 164, is wrong in assuming the existence of an archon as the highest federal magistrate at this time. Archon and bœotarch are used synonomously by Ox. Hell. xi, 4.

[3] Thucydides iv, 91.

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below.[1] The strong centralization of power in their hands is proved by the fact that ordinarily they could count on ratification of their plans, yet in their negotiations of 421, described by Thucydides,[2] they were disappointed. They must have attended not only to military and diplomatic affairs but also to the general executive business of the League. Though clothed with authority which would appear to an Athenian to be excessive, they were responsible for their official conduct to their respective states; and the bœotarch who persisted in his magistracy beyond his term was liable to the death penalty.[3]

Each unit was represented not only in the federal executive by a bœotarch but also in the federal council (βουλή) by sixty delegates, making six hundred and sixty in all. This body, meeting on the Cadmeia,[4] the citadel of Thebes, to deliberate on the affairs of the union, presumably at the suggestion of the bœotarchs, decided the less important questions on its own responsibility and referred the more important to the cities. It was certainly inferior in power to the collective city councils; but we know that it had a real influence from the circumstance that conflicting political parties found an advantage in gaining control of it.[5] There was also a federal court, meeting likewise on the Cadmeia and consisting of jurors (δικασταί) who, like the federal councillors, represented in equal numbers[6] the eleven units described above. It goes without saying that this court tried offences against the union, though we search in vain for more specific information concerning its organization and functions. It would be especially interesting to know in what relation the federal judiciary stood to the courts of component states.

The financial burden of the League was equally distributed among the units. On this principle the states paid the expenses of their own delegates to the federal council and of other representatives and made their contributions to the federal treasury.[7] The units furnished equal military forces—a thousand heavy infantry, a hundred horsemen[8] and probably

[1] *Infra*, p. 291.
[2] V, 37 *et seq.*
[3] Pausanias ix, 14, §§ 5, 7.
[4] Ox. Hell. xi, 4.
[5] *Ibid.*, xii, 2.
[6] *Ibid.*
[7] *Ibid.* xi, 4.
[8] *Ibid.* xii, 4; *cf.* Thucydides iv, 93, 3.

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about a thousand light troops.[1] These contingents were under state polemarchs, who, taking the places assigned them in the line of battle by the commander, exercised their own discretion as to the tactic formation of their several forces.[2] This looseness in the military system not only was a positive disadvantage in war but tended to keep the feeling of separatism alive in the individual states.

The governments of the states performed certain federal functions, and for that reason it is necessary to consider the state constitution in connection with that of the union. As the organization described by the author of the newly discovered Hellenica[3] for the year 395 B. C. existed as early as 421,[4] most probably it was either established or restored in 447. The government was timocratic; those only enjoyed public rights who possessed a certain amount of property,[5] not specified in any known source. From the facts (1) that this form of oligarchy is described as moderate, assuring equality in the enjoyment of legal protection, in contrast with the rule of a cabal, (2) that the cities all provided a considerable number of heavy troops, (3) that the moderate oligarchs of Athens were evidently imitating the Bœotian system when they planned for a government of the five thousand who were best qualified to serve the state in person and property,[6] we must conclude that the Bœotian franchise was broader than the knightly oligarchy and certainly not more liberal, perhaps narrower, than the hoplitic timocracy. As the population of the several cities varied greatly, there must have been correspondingly wide differences in the number of citizens *optimo iure*. Those who were thus qualified to exercise the political rights of citizens were divided

[1] The number of light troops at Delion was 10,000 in addition to 500 targeteers; Thucydides iv, 93, 3.

[2] *Ibid.* § 4. [3] XI, 1. [4] Thucydides v, 38, 2.

[5] Ox. Hell. xi, 1: *Βουλαὶ τότε τέττα[ρες] . . . ὧν ου[χ ἁπασι] τοῖς πολ[ίταις ἐξῆ]ν μετέχειν ἀ[λλὰ] τοῖς κεκ[τημένοις] πλῆθος τ[ι χρημά]των.* From this passage it is clear that there were in every city two chief classes of citizens, (1) those too poor to participate in the councils, (2) those who had the property qualification for the function. What the actual rights of the lower class were may only be conjectured. Doubtless members of the higher class were eligible also to jury service in the states and in the union, and, with further restrictions, to the offices.

[6] Thucydides viii, 65.

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into four sections. These groups took turns in officiating as councils (βουλαί).[1] The length of the term is not stated.[2] To exercise a real influence it was necessary that the council should meet, not simply when summoned by the authorities, but regularly on stated days.[3] Doubtless the city constitution contained a provision to that effect, though what it was we are not told.[4] It assembled further whenever summoned by the bœotarchs. The council for the time being considered matters of public interest and embodied its conclusions in the form of bills. A joint session of all four councils was then held, in which these bills were further considered and accepted or rejected by vote. The councils must have supervised the entire local administration, and they stood in an important relation to the federal government. The bœotarchs were required to refer all weighty federal business, including declarations of war and the making of peace and alliance, to the several cities for decision.[5] It was equally possible for the councils of a city to instruct its bœotarchs to bring any question affecting the welfare of the union before the proper federal authorities for deliberation and action.[6]

[1] Before the discovery of the Oxyrhynchus Hellenica these four councils were known only from Thucydides v, 38. The usual view, that they were a part of the federal government and represented four large districts into which Bœotia was assumed to have been divided, was accepted by Freeman, Federal Government, vol. i, pp. 163 *et seq.* The resemblance between these four councils and those provided for by the definitive oligarchic constitution drawn up for Athens in 411 (Aristotle, Constitution of Athens, 30) is easy to discover and has been mentioned by Köhler, in Sitzungsberichte der Königlich preussischen Akademie der Wissenschaften zu Berlin, 1895, pp. 455 *et seq.* The fact of imitation is so evident that we may feel justified in using the two constitutions reciprocally for illustration.

[2] The rendering given by the editors of the Ox. Hell., p. 223—"Of these boulai each one in turn held a preliminary sitting and deliberation about matters of policy, and made proposals to the other three"—might lead one to suppose that each in turn held a single session. This interpretation is possible though altogether unlikely. The definitive oligarchic constitution drawn up for Athens in 411, and closely modeled after the Bœotian, specifies the length of term as one year; Aristotle, Constitution of Athens, 30, 2.

[3] *Cf.* Botsford, Roman Assemblies, pp. 168, 173.

[4] The Athenian council provided for by the constitution mentioned *supra*, p. 291, n. 3, was to meet every fifth day or oftener if necessary; Aristotle, Constitution of Athens, 30, 4.

[5] Thucydides v, 38.

[6] Freeman, Federal Government, vol. i, p. 164, too hastily assumes that the councils had no initiative.

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In summing up the votes of the states the bœotarchs must have reckoned as votes for each city the number of units which she controlled—four for Thebes, two for Thespiæ *etc.* A single vote cast by a group of three states, as Haliartos, Lebedeia and Coroneia,[1] was necessarily determined by a majority of the three. This use of the referendum is a remarkable attempt to harmonize federalism with city autonomy. The degree of independence of the several cities relative to one another and to the union must have varied greatly; the Lebedeians, for instance, who had but a third of a vote, counted for little by the side of Thebes, who by securing two votes in addition to her own could decide the referendum at her pleasure.

B. POLITICS AND PARTIES; THE TREATY OF ANTALCIDAS

In considering the politics of Bœotia it is necessary to keep in mind the threefold conflict which was always more or less active: (1) between poor and rich, democrats and oligarchs; (2) between factions of the same party; (3) between centralization, upheld by Thebes, and separatism, represented in a varying degree by perhaps all the other states. The antagonisms here mentioned were further complicated by the relations between these conflicting forces on the one hand and outside states and parties on the other. From the restoration of the League in 447 to about the middle of the Peloponnesian war, federalists and oligarchs looked to Sparta for protection; and, as their safety depended on keeping open communications with Peloponnesus,[2] they cultivated friendly connections with Corinth[3]; whereas they hated and feared Athens as their most active and deadly enemy. A strong sympathy existed, on the other hand, between the oligarchs of Athens and those of Bœotia, and again between Athenian and Bœotian democrats, which often overrode the loyalty of the citizen to his state. In two respects the Peloponnesian war was directly advantageous to Thebes. In the first place much of the booty taken from Attica by the Peloponnesians came into their hands at a merely nominal price,[4] and probably they themselves from the begin-

[1] *Supra*, p. 287. [2] Thucydides iv, 72, 1. [3] *Ibid.* i, 27, 2. [4] Ox. Hell. xii, 3.

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ning joined in the raids in order to carry off plunder. The author of the Oxyrrhynchus Hellenica[1] states that the Thebans

prospered much more after they with the Lacedæmonians had fortified Deceleia against the Athenians; for they acquired at a low price the slaves and everything else taken in the war, and, as they lived along the border, they seized for themselves all the moveable property and furnishing material of Attica,[2] beginning with the wood and tiles of the houses. At that time the country of the Athenians was the most richly furnished in Greece; for it had suffered little loss in the former invasions of the Lacedæmonians.

This new information, while incidentally throwing a welcome light on the economic condition of Attica in the age of Pericles, helps to explain the attitude of Thebes toward the Peloponnesian war. The author probably underestimates the Athenian losses in the early part of the war and exaggerates the wealth of the country in the later period; but the result is the same: Thebes profited throughout the conflict.

Equally new is his statement as to the growth of Thebes at the expense of the other Bœotian communities:

The Thebans made great progress toward the attainment of complete prosperity from the very time when the war broke out between the Athenians and the Peloponnesians; for, when the Athenians began to threaten Bœotia, emigrants, settling in the city from Erythræ, Scaphæ, Scolos, Aulis, Schoenos, Potniæ and many other unwalled places, doubled the population of Thebes.

Some of these small places, as Erythræ, Scolos and Scaphæ, had belonged to Platæa till the capture of that city in 427, when they were annexed to Thebes.[3] This fact proves the author to be referring to the early years of the war rather than to the very beginning of it. The inhabitants of some of the other places mentioned probably migrated to Thebes shortly after the fall of Platæa, in the years 426–424, when Athens actually threatened Bœotia.[4]

[1] Ox. Hell. xii, 4.

[2] Τὴν ἐκ τῆς Ἀττικῆ[ς κ]ατα[σ]κευὴν . . . ἅπασαν μετεκόμισαν ὡς αὑτούς.

[3] *Supra*, pp. 284, 285; Ox. Hell. xii, 2.

[4] *Cf.* Thucydides iii, 91. The enlargement of the walls, referred by Diodorus (*cf. supra*, p. 280, n. 1) to 457, may have taken place at this time.

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Thebes profited from the war not only in these direct ways but also in gaining a stronger control over the union. After the battle of Delion, and still more after the failure of the Sicilian expedition, Bœotian democrats and separatists[1] despaired of help from Athens. In fact the Athenian oligarchs had long admired those of Bœotia; and, when after the Sicilian disaster the former came into political power, they used the Bœotian constitution as their model for the limitation of the franchise and the division of the citizens *optimo iure* into four rotating councils.[2] In other words, the conditions of the war not only were enabling Thebes to gain wealth and centralize Bœotia but also gave her an unexpected hope of controlling the politics of Attica. These facts amply explain her opposition to the peace of Nicias, 421 B. C. They help us to understand, too, why in the negotiations which closed the war the Thebans urged the allies to blot the conquered city out of existence.[3] During the war they had developed a greed for Attic territory,[4] which the destruction of the city would enable them to satisfy. In rejecting this proposal the Lacedæmonians may have been actuated, not only by the ideal motive ascribed to them by Xenophon,[5] but also by the desire to maintain in central Greece a counterpoise to Thebes, whose self-aggrandizement had for some time been exciting their suspicion.

The party which dominated Thebes during the negotiations for peace, and which was responsible for the suggestion to destroy Athens, had for its leaders Leontiades, Asias and Corrantadas.[6] Soon afterward it was overthrown by a rival oligarchic faction led by Ismenias, Antitheos and Androcleidas,[7] who opposed Sparta and hospitably received the democratic exiles from Athens during the rule of the Thirty. Their kind-

[1] That their resentment at Theban aggression was still strong in 407 is proved by Xenophon, Memorabilia, iii, 5, 2.

[2] *Supra*, p. 291, n. 1.

[3] Xenophon, Hellenica, ii, 2, 19; Plutarch, Lysander, 15.

[4] On their seizure of Panactum and their reluctance to restore it, see Thucydides v, 3, 18, 39.

[5] Hellenica, ii, 2, 20.

[6] Ox. Hell. xii, 2; Xenophon, Hellenica iii, 5, 8; Plutarch, Lysander, 15.

[7] Ox. Hell. xii, 1. For Antitheos, Xenophon, Hellenica, iii, 5, 1, has substituted Galaxidoros. Such discrepancies are not to be set down as contradictions.

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ness to these refugees sprang from no friendship for Athens or democracy, but from the hope of being able to turn the occasion to the disadvantage of Sparta.[1]

On receiving an invitation from Lacedæmon to join in putting down the democratic force at Peiræus, 403 B. C., Thebes refused, ostensibly because Athens had done nothing contrary to the treaty but in reality because she suspected the Lacedæmonians of a desire to annex Attica to their own territory.[2] Sparta did not forget this neglect of allegiance.[3] But the governing faction at Thebes was soon to be irreconcilably embittered by the discovery that the Lacedæmonians were secretly interfering in their affairs for the purpose of restoring to power the recently overthrown party of philo-Laconians.[4] When therefore Agesilaus, in the role of Agamemnon, overlord of all Greece, attempted to set sail from Aulis, the Bœotians sent cavalry to forbid his sacrifice. These troops performed their duty well; seizing the pieces of victims, they scattered them about the altars. Agesilaus embarked in extreme indignation, calling the gods to witness this insulting sacrilege.[5]

Meanwhile the Bœotian separatists continued to cherish their dislike for Thebes;[6] and early in the Corinthian war it proved an easy task for Lysander, at the head of an invading force from Peloponnesus, to detach Orchomenos from the union, 394 B. C.[7] In spite of heavy losses the federal government, with little wavering,[8] persisted in the war till Persia, transferring her support from central Greece to Peloponnesus, forced upon Hellas the treaty of Antaicidas, 387 B. C. From the beginning of the negotiations the Thebans were apprehensive for the integrity of the union.[9] The terms, which seem to have been

[1] Ox. Hell. xii, i. [2] Xenophon, Hellenica ii, 4, 30. [3] *Ibid.* iii, 5, 5.

[4] This is new information from Ox. Hell. ii, 2. The author, speaking of the year 395, states that the Thebans had long been hostile to Lacedaemon, *ὅτι τοῖς ἐναν[τίοις]ς τῶν πολιτῶν αὐτοῖς ἐχρῶντο φίλοις*, which must refer to the time earlier than the embarkation of Agesilaus from Aulis. The opponents of the men in power were certainly not democrats but another oligarchic faction.

[5] Xenophon, Hellenica iii, 4, 3 *et seq.*; Plutarch, Agesilaus, 6.

[6] *Cf.* Xenophon, Memorabilia iii, 5, 2.

[7] Xenophon, Hellenica iii, 5, 6; Plutarch, Lysander, 18.

[8] Xenophon, Hellenica iv, 5, 6. [9] *Ibid.* iv, 8, 15.

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composed with especial reference to their League, declared all Greek cities autonomous excepting certain island possessions of Athens.[1] All the states of Greece unreservedly swore to the treaty with the exception of the Thebans. They were as willing indeed as any, but claimed the right to take the oath in behalf of all the Bœotians.[2] Though we now hear the enunciation of this doctrine for the first time, Thebes had long been tending toward it; in fact it had been forshadowed by her coinage since 447. The treaty of Antalcidas forced her to take the decisive step. The recent desertion of Orchomenos and the growth of separatist feeling in the other states were making federation difficult; Bœotians, Greeks and Persians were sure to interpret autonomy as the unconditioned independence of the states and the complete dissolution of the League. Thebes would win a great success, on the other hand, if she could induce Persia and the states of Greece to consider all the Bœotians Thebans. In this way she hoped to preserve the unity of Bœotia and even to make a notable advance in centralization. Whether in the event of success she would really have absorbed the states or reduced them to subjection remains unknown. It is true that her enemies looked upon her allies as *periœci*[3]; but her earlier policy in the matter seems to indicate her intention to treat as Thebans the Bœotians who would accept this status and to banish recalcitrants or reduce them to submission. The present study tends to prove that the Thebans were not so tyrannical nor the Bœotians so enslaved as Freeman and others have tried to make out. The solution of the Bœotian problem along one or the other of the two lines above indicated was prevented by a threat of war from Sparta in case the states should not be permitted to sign for themselves. Thebes yielded. Her promise to leave the cities autonomous was fulfilled,[4] and again the League was temporarily dissolved.

G. W. BOTSFORD.

[1] Xenophon, Hellenica v, 1, 31. [2] *Ibid.* v, 1, 32.

[3] *Ibid.* vi, 4, 6: Αἱ περιοικίδες αὐτῶν πόλεις. Epaminondas seems to speak of the Bœotian cities as having the same status as the Laconian *periœci*; Pausanias ix, 13, 2. He may be thinking here, however, not of their subjection to the leading state but simply of their lack of autonomy.

[4] Xenophon, Hellenica, vi, 1, 33, 36; Plutarch, Agesilaus, 23; Diodorus xiv, 110.

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THE BRITISH LABOR PARTY IN 1910

BETWEEN the second Reform Act of 1867 and the general election of January, 1910, great changes of political thought and movement occurred in the British constituencies as well as in Parliament. The extension of the franchise in 1867 to householders in boroughs marked a new inroad on the influence and power of the landed classes and the beginning of the end of the hitherto undisputed dominance of the two historic political parties in the House of Commons. It made practicable the formation of an Irish Nationalist party. It also enabled direct representatives of labor—representatives who belonged to the laboring class—to find their way into Parliament. The result of the act of 1867 and of the further extension of the franchise in 1884 in facilitating the development of new party groupings is seen in the fact that, at the general election of January, 1910, there were for the 670 seats in the House of Commons no fewer than 177 candidates—of whom 123 were elected—owing no allegiance either to the Conservative-Unionist or to the Liberal party and having no close affiliations with either of these parties. Of the candidates who were thus beyond the control of the old party organizations, 84 were Nationalists; 78 were of the Labor party; seven presented themselves under the auspices of the Social Democratic Federation, the oldest of the socialist organizations in England; and three described themselves as independent Socialists.

The history of labor representation in the House of Commons, from the election of Thomas Burt and Alexander Macdonald, in 1874, to the incoming of the Asquith administration in 1908, has been traced in this review.[1] The present article deals with the fortunes of the labor movement in the recent general elections, and with the changes and developments which have occurred in the grouping of the labor representatives.

[1] Edward Porritt, "Party Conditions in England," POLITICAL SCIENCE QUARTERLY, June, 1906, vol. xxi, pp. 206–236, and "The British Socialist Party," *ibid.*, September, 1908, vol. xxiii, pp. 468–497.

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At the dissolution of the Parliament of 1906–10 there were in the House of Commons 61 Labor members. These were divided into four groups. The Liberal Labor group, with fifteen members, and the Miners' Federation, with fourteen—to name them in the order in which they came into existence—sat with the supporters of the Bannerman and Asquith governments and received the Liberal whips. To the speaker's left on the opposition side of the chamber sat the Independent Labor and the Trade Union groups, with seven and twenty-five members respectively. For most purposes these two latter groups acted as one party, responding not to the government whips but to their own whips and working continuously for the same aims and policies. The most important changes that these four groups underwent at the general election and in the short session of Parliament that followed the election in January, 1910, were the disappearance of the Liberal Labor representatives as a distinct parliamentary group, and the merging of the Miners' Federation group with the two newer groups into what is now becoming known as the National Labor party.

The organization of such a party—the union of the Independent Labor and Trade Union groups with the Miners' group into a single body—had been determined upon long before there was any likelihood that there would be a general election in 1910. The new and enlarged party was made possible by the action of the Miners' Federation, an organization with some six hundred thousand members, which within the last few years has so extended itself that it now embraces all the coal fields of England and Scotland. The miners are organized locally and also by counties; and to-day all the county associations are of the Miners' Federation. Ever since Burt and Macdonald were returned to Parliament as miners' members in 1874, the election expenses and the maintenance of the miners' members at Westminster have been a charge on the miners' unions; and in almost every case the members so maintained have been permanent paid executive officials of miners' unions. There were seventeen[1] miners' members in the Parliament of 1906–10. Since

[1] Including three who belonged to the Liberal Labor group and who have since refused to go over to the National Labor party.

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1885 it has been easier for miners than for other trade-unionists to secure the election of direct representatives of labor to the House of Commons, for county electoral divisions which include large coal-field areas can be dominated by them at a parliamentary election. Further, because the mining code administered from the Home Office brings miners more closely in touch with the law than any other trade-unionists, they have been more strongly moved than the others to seek direct representation of their interests. Consequently there has been no time since 1874 when miners' representatives were not of the House of Commons. Only two such members were returned between 1874 and 1885; but the extension of the franchise in 1884–85 to the working classes who did not live in parliamentary boroughs created opportunities of which, since then, the miners' unions in England have availed themselves.

Between 1874 and 1910 the miners' members invariably sat with the Liberal party, whether the Liberals were in power or in opposition; and, although they had an organization of their own and frequently acted as a group, for all practical purposes they were as fully a part of the Liberal Labor group as was John Burns until by his inclusion in 1905 in Campbell-Bannerman's cabinet, he became an official Liberal, or as were Henry Broadhurst, Randall Cremer, George Howell and Joseph Arch, when these labor leaders of the older school were of the House of Commons. The miners' members received the Liberal whips; they appeared on Liberal platforms in the constituencies; and they were closely associated with the local organizations of the Liberal party in the boroughs or county divisions from which they were returned to Parliament. There was no objection to this association of the miners' members with the Liberal party in and out of the House of Commons until, between 1905 and 1910, the Independent Labor and Trade Union groups became a power in the industrial constituencies and in Parliament. Then these groups, which held aloof from the Liberals, began to use their influence to bring the miners' members into line with them. While these efforts were making, the Miners' Federation was extending its influence. It began as an organization of the mining counties in the Midlands; but grad-

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ually all the mining areas were brought within its territory. The last counties to come in were Northumberland and Durham. With the miners' organizations in these two counties Burt, Fenwick and Wilson—all members of the House of Commons—had long been associated.

On two or three occasions between 1905 and 1908, there was a movement from within the Miners' Federation for association with the Labor party in the constituencies and in the House of Commons, and for terminating the connection of the miners' members with the Liberal party. The movement, which was finally successful, began at the annual conference of the Miners' Federation held at Chester, in October, 1908. The Federation then decided to join the Labor party, under the condition that its members in the House of Commons be not called upon to sign the constitution of that party except at by-elections and at the next general election. A ballot of the members of the Federation endorsed this action of the Chester Conference; and in the autumn of 1909 notices were given to all the miners' members that if they desired reëlection they must sign the constitution of the Labor party. Burt, Wilson and Fenwick were the only members of the group of seventeen miners' representatives in the Parliament of 1906–10 who refused to comply with this condition.

Burt has represented the Northumberland borough of Morpeth since 1874; and it was to the electors of Morpeth that, on October 30, 1909, he explained his reasons for refusing to sign the constitution of the Labor party. "There were," he said,

> two points in particular in the constitution to which he objected. . . . The more important clause was that which bound a member to vote for or against a measure at the behest of his comrades before it had been discussed. That struck a fatal blow at any true sound parliamentary representation, and it was fatal to the very essence and principle of representative government. He was asked not to be obedient merely to his constituents—in fact, they were left out of account as if they had no existence—he was asked to be obedient to outsiders.[1]

[1] *Yorkshire Post*, November 1, 1909.

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Fenwick, who is one of the few miners' members of the House of Commons who is not an executive officer of a miners' union, but whose salary as a member of Parliament is paid by the miners of Northumberland, explained his position to the electors of the Wansbeck division on the same day on which Burt addressed the electors at Morpeth. "The constitution of the Labor party," he said,

> would make a man subordinate his own judgement and his own convictions to the party. It would also bind him to appear before his constituency simply as a class representative, and in view of the fact that he, among others, had devoted his efforts to the breaking down of class distinctions, it was extraordinary that such a demand should be made upon him. As an honest man, he could not sign the constitution. He had been told over and over again that the pledges contained therein were continually violated, and that failure to rigidly observe them was not visited with pains and penalties. But the words were there, and he would not sign anything to which he could not conscientiously agree. He was selected for the Wansbeck constituency twenty-five years ago as a free man . . . His constituents had allowed him to exercise his judgement and common-sense, and he would never consent to be hampered in his actions in the way suggested. . . . When his occupation as a member of Parliament was gone, his salary would go. That fact would not weigh with him; he put conscience before all other considerations. He regarded the possibility of becoming one of the unemployed with complacency.[1]

These and similar declarations by Burt and Fenwick caused much commotion among the miners of Northumberland. There was a division among them as to whether an exception should be made in favor of these veteran leaders. The question was settled by a ballot of the miners' lodges. In Northumberland there are some 30,000 miners. The number who voted was 23,339; and the ballot was adverse to Burt and Fenwick by 1678 votes. The result was made known on December 13; and on December 16 it was announced that miners' agents who would sign the constitution were to be nominated at Morpeth and in the Wansbeck division in opposition to Burt and

[1] *Yorkshire Post*, November 1, 1909.

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Fenwick. But as the general election drew near it was decided not to push this opposition. Burt and Fenwick were accordingly reëlected, and in the new Parliament they continued their association with the Liberal party.

John Wilson, of the House of Commons since 1896 as member for Mid-Durham, and a salaried official of the Durham miners, explained his reasons for refusing to sign the constitution of the Labor party in a newspaper interview. He declined, he said, to refuse to go on a Liberal platform, because he had been a Liberal all his life. He objected to be compelled not to oppose a candidate recognized by the Labor party regardless of his character; and he objected also to the constitution because it required him to give a pledge of good conduct when he had been forty years in public life.[1] Wilson, like Burt and Fenwick, was reëlected; so that in the new House of Commons there were three miners' members who held aloof from the Labor party and grouped themselves as before with the Liberals.

The Miners' Federation representatives numbered fifteen when the Parliament elected in 1906 met for its first session. Gains at by-elections brought the number up to seventeen—including Burt, Fenwick and Wilson—before the 1906–10 Parliament was dissolved. In any survey of the developments in the Labor movement in the general election of January, 1910, it is essential that the new position taken by the Miners' Federation in 1908 should be made clear.

To understand the attitude of the Labor party towards the Liberal party in 1910 it is equally essential to review their relations during the preceding Parliament. It was by aggression, and by aggression that necessarily told against the Liberal party, that the Labor party established itself in the House of Commons. It continued that aggression during the Parliament of 1906–10; and by an aggressive policy at the by-elections it increased its membership from 29 to 32.[2] These seats were secured at the expense of the Liberal strength in the House of Commons before the decision of the Miners' Federation in 1908 to throw

[1] *Yorkshire Post*, December 17, 1910.

[2] Porritt, "The British Socialist Labor Party," *loc. cit.*, pp. 475 *et seq.*

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in its lot with the Labor party. During the same period, moreover, the Liberals deemed it expedient to hand over to the Miners' Federation two constituencies in the Derbyshire and Nottinghamshire coal fields, which at the general election of 1906 had been carried by Liberals. Labor aggression during the Parliament of 1906–10 thus resulted in the transfer of five seats formerly held by Liberals to the Labor groups.

The policy of persistent aggression pursued at the general election of 1906 and at the succeeding by-elections had answered well for the Labor party, increasing its strength in the House of Commons and greatly aiding its propaganda. It was the intention of the leaders to adhere to this policy; and had not the rejection of the budget by the House of Lords precipitated the dissolution of Parliament there would have been more than twice as many Labor candidates at the general election of 1910 as there had been at the general election of 1906. Local organizations—labor representation committees and trade-union councils—decide on candidates and on constituencies to be contested, subject to approval by the executive committee of the Labor party. At the end of October, 1909, there were Labor candidates, many of whom still awaited the approval of the central executive committee, in 102 constituencies. Included in these were the 46 constituencies then represented in the House of Commons by members of the various Labor groups. In the other 56 constituencies many Liberal seats were threatened by the Labor candidates; and when the general election was precipitated there was much apprehension among Liberals that many seats might be endangered by these Labor candidates.

Out of these apprehensions was developed at the end of November, when the crisis with the Lords was imminent, the rumor that there was to be a compact between the Liberal and Labor parties to avoid three-cornered contests likely to result in the election of Unionist candidates. There seems to have been a suggestion from J. A. Pease, the chief Liberal whip, that the Labor party would not be prejudiced in the long run if it contented itself with the seats it held at the end of the Parliament of 1906[1]—a suggestion that the activity of the Labor party in

[1] *Yorkshire Post*, November 22, 1909.

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supporting candidates of its own should be confined to constituencies where Labor organizations were established and in possession. The idea that there was a compact between the Liberals and the Labor leaders was assiduously propagated by the Conservative press in London and in the provinces. It was, however, denied by the leaders of the Labor party at least a month before the writs were out; and at the election there were 78 Labor candidates, as compared with 50 Labor candidates and 16 miners' candidates at the general election of 1906. Arthur Henderson, member for Barnard Castle, Durham, was the chairman of the Labor party in the 1906–10 Parliament. "There has been," he said at a meeting at Canning Town, London, on December 10, "no alliance with the Liberal party. There can be no alliance. It would be against our constitution." He further stated that

> candidates had been withdrawn, and others might be. The Labor party had not expected the election so soon, and while they had to depend upon their friends the workers for the pennies their decision could not be wondered at. They had withdrawn candidates to oblige nobody, but only to suit themselves—because of their determination to do nothing that might bring about a victory for the Lords.[1]

This repudiation by Henderson of any alliance with the Liberals was supplemented, three or four days later, by a statement by J. R. Clynes, member for Northeast Manchester. Clynes was a member of the national executive committee of the Labor party, and his statement was made immediately after a meeting of the executive committee in Manchester:

> Besides the settled Labour candidatures there have been up and down the country a number of merely contemplated or tentative candidatures, for which a certain amount of preliminary work has been done. These are constituencies that might ultimately have been found in a fit state to fight. But this election has come along unexpectedly early, and in these places we have found that we are not sufficiently prepared. We have not the organization nor the money in these cases to win, and the issues in this election are such that we do

[1] *Manchester Guardian*, December 11, 1909.

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not want to do anything to help to return a candidate who is against the Budget and on the side of the Peers. It is only in such cases that Labour candidates have anywhere been withdrawn. We feel that the success of the Tories in this election would mean the setting back of the legislation we want for a full generation. There have been no withdrawals of Labour candidates as a concession to the Liberal party. They have been due to our own inability in those places to make a good fight and to the genuine feeling that our failure to win would tend to the success of our worst enemy in the contest. Where there happen to be at present evidences of three-cornered fights I doubt whether any step can be taken to withdraw the Labour candidate. In all these cases where there are Labour men at present standing we feel that we have the justification of past successes and prospects of victory which entitle us to go to the poll.[1]

Earlier than these declarations of policy by Henderson and Clynes, the *Labour Leader*, the only newspaper with a national circulation that supports the Labor party, had vigorously repudiated the idea of a compact with the Liberals to avoid three-cornered contests. "Every-one recognizes," said the *Leader*,

the vastness and far-reaching importance of the issues at stake. But if for the moment the Liberals happen to be waging a righteous conflict, that is no reason why Labour should stay its hand. We have to look beyond the present and into that not distant future when Mr. Pease and his Whig friends will have found salvation in a new Whig-Tory alliance against Socialism. . . . There can be no bargain, arrangement or agreement with either Liberals or Tories. Anything of the sort would be like a disintegrating fluid which would resolve the party into its original elements and undo all the work of the past twenty years.

Much the same line was taken by Keir Hardie (with whom the idea of an independent Labor party originated) when he addressed his constituents at Merthyr Tydvill, on December 11. "He was not there," he told them,

to apologize for three-cornered contests. Let them make no mistake on that point. It had been by means of those contests that the Labour

[1] *Manchester Guardian*, December 16.

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party had been made possible. How else were they to make a party? There had been five by-elections in which the Labour party had taken part since the general election. The whole five had been three-cornered contests, and they had won three out of the five. If they had been deluded into keeping quiet lest they should split the progressive vote the Labour party in the House of Commons would have been three short of its present number. At a time like the present they did not want to do anything to strengthen the hands of the Peers, neither could they afford to do anything to weaken the militant fighting spirit of their own movement, upon which the whole future well-being not merely of the working classes but of the British Empire depended.[1]

In accordance with the policy enunciated by Henderson, Clynes, Hardie and the *Labour Leader*, candidates in twenty-four constituencies were withdrawn, including two in London, four in Scotland, four in Wales, one in rural England—where, up to the general election of 1910, the Labor party had never ventured on a contest—and thirteen in industrial constituencies in provincial England, such as Northampton, Newcastle-on-Tyne, Leeds and Birmingham. A tentative list of 102 candidates, which had come into existence when it was thought that the general election would not occur before January, 1911, was thus reduced to 78; and in all these 78 cases the Labor candidates went to the poll. Fourteen were candidates of the Independent Labor party; two were put forward under the auspices of the Fabian Society, which made itself directly responsible for the returning officers' fees and other charges which fall on candidates; twenty-seven represented the Trade Union group; and twenty-five, the Miners' Federation.

In England there were 67 Labor candidates for urban and industrial constituencies—boroughs and county divisions—and one candidate for a rural division in Gloucestershire—the first representative of labor to contest an agricultural constituency since Joseph Arch, of the Agricultural Labor Union, ceased in 1886 to represent the northwest division of Norfolk. In Scotland there were nine Labor candidates in industrial or mining constituencies. Of the 78 Labor candidates, 65 were in single-member constituencies and 13 in constituencies such

[1] *Manchester Guardian*, December 13, 1909.

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as Blackburn and Govan, which return two members to the House of Commons. In 27 of the 65 single-member constituencies the Labor candidates were opposed by Liberal or by Liberal and Unionist candidates; in the other 38 single-member constituencies there were straight fights between Unionists and Labor men. Of the 13 double-member constituencies there were nine in which the contests were between one Labor and one Liberal candidate and two Unionist candidates—contests in which the Liberals and the Labor men practically joined forces to carry the two seats; there was one in which a Labor and a Liberal candidate were in opposition to an independent Liberal and a Unionist candidate; one in which there were Labor and Liberal candidates in opposition to an independent Liberal and two Unionist candidates; one in which there was one Labor candidate in opposition to two Liberal and two Unionist candidates; and one in which the Labor and Liberal candidates joined forces in opposition to three Unionist candidates. In 18 of the 65 single-member constituencies, seats that had been Liberal in the Parliament of 1906–10 were endangered by Labor candidacies; and including the double-member constituency noted above, in which one Labor candidate ran against two Liberal and two Unionist candidates, 19 seats hitherto in possession of the Liberals were endangered by the action of the Labor party.

In five of the constituencies where Liberal seats were endangered by the Labor party—in Bow and Bromley, Cockermouth, the Camlachie division of Glasgow, Southwest Manchester and Whitehaven—the seats were captured by the Unionists, although in each case the aggregate vote for the budget and against the aggression of the House of Lords was greater than the Unionist vote. At Burnley also the Liberals lost a seat, not indeed by the intervention of the Labor party, but from the candidacy of H. M. Hyndman, who for nearly thirty years has been chairman of the Social Democratic Federation and, at each recurring election since 1895, candidate of the Federation at Burnley. In sixteen of the three-cornered contests in which Liberals were involved by Labor candidacies, the Liberals held their own and returned their candidates; and in the Colne Valley division of Yorkshire, where Victor Grayson, an inde-

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pendent Socialist, captured a Liberal seat at a by-election in 1907, the seat was recaptured by a Liberal.

Including the miners' members but excluding Burt, Fenwick and Wilson, the Labor party numbered 46 in the House of Commons of 1906–10. It went back to Westminster after the general election with a strength of 40.[1] Three new seats were gained at the general election: one previously held by a Liberal Labor member, who had accepted a permanent official position in connection with the Board of Trade labor exchanges established at the beginning of 1910, and two, in Lancashire, held in the preceding Parliament by Unionists. Against these three gains, however, the Labor party had to set the loss of nine seats which had been in its possession at the dissolution, including one at Gateshead, held by a miners' member, which in a three-cornered contest was wrested from the Labor party by the Liberals.

At the general election the Labor party had one candidate in Ireland. Otherwise, so far in its history, it has been an exclusively British organization; and except for the contest in 1910 in the Tewkesbury division of Gloucestershire, where its candidate polled only 238 votes, it has for obvious reasons confined its persistent and vigorous political propaganda to the industrial and mining constituencies. Until the last general election it had made little continuous effort to secure a foothold in London. The geographical distribution of its polled electoral strength at the January election in England, Wales and Scotland is shown by the following figures:

Scotland	37,850	Midlands	99,271
South Wales	62,989	Cheshire	10,463
London	39,705	Durham	62,798
Yorkshire	65,103	Lancashire	120,832
Total			499,011

Its strength is thus much less than the number of plural voters in England alone; for of these there were in 1910 some 566,300, including in this estimate 20,110 voters in the three

[1] After the general election the various groups in the House of Commons stood thus: Liberals, 274; Unionists, 273; Independents, 123. The latter group included: Nationalists, 83; Labor, 40.

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English university constituencies of Cambridge, Oxford and London,[1] but not including plural occupation voters.

In 1906, when the Labor party achieved its first great success at a general election, it polled 323,195 votes and elected 29 members. At the general election in January, 1910, it polled 499,011 votes and elected 40 members.[2] This increase in the poll and in the number of candidates elected, it need scarcely be explained, was due to the fact that the Miners' Federation was of the Labor party at the last general election. Through its county organizations the Federation had put forward twenty-five candidates; and of these twelve were elected and sat with the Labor party in the new House of Commons.

While the Labor party by its policy at the election jeoparded nineteen Liberal seats and actually threw five of them into the hands of the Unionists, and while there was some bitterness toward the Liberal party in constituencies such as the Liegh division of Lancashire, Southwest Manchester, the Hyde division of Cheshire and Gateshead, owing to the feeling that the Labor party had peculiar claims on these seats, the Labor and the Liberal parties were at one on the three great issues of the election. In and out of Parliament the Labor party wholeheartedly supported the Lloyd George budget. It was in agreement with the Liberals as to the absolute necessity of curbing the interested aggression of the House of Lords in the Parliament of 1906–10—an aggression which had been developed to safeguard the landed and the liquor interests and the Established Church—and from the time the Labor party began to develop strength, in the House of Commons of 1900–06, it

[1] Many liberal defeats at the general election were due to plural voters. "One more lesson we may also take home from the experiences of the late election," said Mr. Asquith, at Oxford, on March 18, 1910, "and that is how important, nay, how vital it has become, I won't say in the interests of the Liberal party alone, but in the interests of, and in the active representation of, the true judgement of the people, that you should get rid of these plural qualifications which at present adulterate the popular verdict. I find, and the figures have been carefully investigated, that there are no fewer than 78 county divisions which were contested at the recent election which are now held by Conservative members—69 in England, one in Wales, three in Scotland, five in Ireland—where the ownership vote exceeds in number the actual Conservative majority."—*Manchester Guardian*, March 9, 1910.

[2] *Cf.* "The Labor Party Poll," *Labour Leader*, February 11, 1910.

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had maintained an unbroken front in opposition to Chamberlain's propaganda for a revival of protection.

Within three days after the rejection of the budget, on December 3, 1909, the National Labor party issued a manifesto which read, in part, as follows:

A general election has been forced upon the country by the action of the House of Lords in rejecting the Budget. The great question you are to decide is whether the Peers or the people are to rule this country. Each session since the last general election important Bills, upon which the House of Commons had spent much time, have been mutilated or destroyed by the House of Lords, an irresponsible body which represents nothing but its own class interests. Not content with this, they now claim the right to decide what taxes shall be paid, upon whom they shall be levied, and for what purpose they shall be spent. They also claim to dictate the date at which Parliament shall be dissolved. The time has come to put an end to their power to override the will of the Commons. The country has allowed landowners to pocket millions of pounds every year in the shape of unearned increment, and yet they object to pay a small tax upon what, in justice, should belong to the State. They wish at all costs to preserve their power to plunder the people. The Labour party welcome this opportunity to prove that the feudal age is past, and that the people are no longer willing to live on the sufferance of the Lords. The issues you have to decide are simple. Our present system of land ownership has devastated our countryside, has imposed heavy burdens upon our industries, has cramped the development of our towns, and has crippled capital and impoverished labour. . . . The working and middle classes are still over-burdened with rates and taxes. All these problems will demand the attention of an active, determined and independent party, drawn from the people and in touch with the people. The Labour party therefore appeals to you to renew your confidence in it, to add to its ranks and increase its power. Vote for the Labour candidates. The land for the people! The wealth for the wealth-producers! Down with privilege! Up with the people!

On January 5, 1910, the Miners' Federation issued to its six hundred thousand members a manifesto, declaring that "the most recent action of the House of Lords is only the crowning act of a long series of claims made by them to mutilate or reject measures of a democratic nature which have passed through

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the House of Commons," and urging that the miners' vote in every constituency "should be given for ending autocratic power, which exists only and solely to defend the interests of the landlords and other wealthy classes." "The Miners," this manifesto continued,

> are now connected by the closest tie with the Labour party, and in every constituency in which a candidate has been adopted by the Miners' Federation or by the Labour party it is the duty of every mine-worker not only to vote but to work for the return of such candidate. The whole of the Labour members can always be relied upon to support any measure in this interest and to the benefit of the miners. The Old-Age Pensions Act must be amended, the pauper disqualification removed, the age limit reduced. The fate of the aged poor depends to a great extent on the return to the next Parliament of a largely increased number of Labour members. Several important amendments to the Workmen's Compensation Act are urgently required. Parliament may not find time to deal with them if there is a falling off in the number of Labour members, We trust at this election you will not allow any petty thought of creed or nationality to interfere with your vote, but cast it in the interest of yourself, your wife and children.

A third manifesto, addressed to supporters of the labor movement in politics, was issued December 29, 1910, by the administration council of the Independent Labor party, the Socialist group within the Labor party. This group numbered seven members in the House of Commons of 1906–10, and it maintains its own organization and propaganda in the constituencies, distinct from the organizations of the Trade Union group and the Miners' group. "The Independent Labour party," this manifesto declared,

> is opposed to the House of Lords, and does not desire to mend, but rather to end it. It regards the claim of the House of Lords to control the finances of the country as an outrage on popular liberty to be stubbornly resisted. The Independent Labour Party will strenuously resist any attempt to strengthen the House of Lords by reforming it, or to increase its power of obstruction in the manner proposed by the late Prime Minister.

The parliamentary committee of the Trades Union Congress,

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with which the Trade Union group in the Labor party is associated, also issued on December 7, 1909, a manifesto declaring that the House of Lords had never voluntarily done anything to promote the interests of the masses of the people.

> On the contrary they have protected every abuse, supported every privilege, and persistently and consistently delayed reform. They are an irresponsible body, and a hindrance to all social progress. How much longer are you, the workmen of England, going to be dictated to by the House of Lords? The Budget just rejected by the House of Lords has three outstanding merits. It taxes according to the ability to pay, puts the additional taxes on luxuries and not necessaries, and the money will be largely expended in the provision of Old Age Pensions. The House of Lords as it stands to-day is a menace to political freedom, and their action in rejecting the Budget proposals is a deliberate and unpardonable insult to the duly elected representatives of the people. They have chosen to throw down the gauntlet. Let us accept the challenge.

In the North of England and in Scotland, where most of the Labor contests were made, popular feeling was unmistakably much stronger against the House of Lords than in the metropolitan boroughs or in the boroughs and electoral divisions of the agricultural and residential counties contiguous to London or in the agricultural counties of the West of England. It is in these agricultural and residential counties that feudalism in politics retains its strongest hold. In the areas where the Labor party had most of its candidates, the feeling against the Lords and against protection was so strong and pronounced as to make it a disadvantage to the Labor party that the great issue between the Commons and the Lords had been thrust into the election. The robust Liberalism of the North of England and of Scotland has long been eager to come to grips with the Lords. Hitherto it had been held back by its official leaders at Westminster, most of whom had not been eager for a conflict. In the North of England and in Scotland, the issue which had been made by the aggression of the Lords rather than by the policy of the official Liberals was welcomed. Especially was this the case with Scotland, where out of 72 members only 11, including the representatives of the Universities of Edinburgh,

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St. Andrews, Glasgow and Aberdeen, were returned as supporters of the action of the House of Lords and as protectionists. There were nine Labor candidates in Scotland, five of whom were in mining constituencies. Only two were returned, both from industrial constituencies—Dundee and Blackfriars division of Glasgow—seats which had been held by the Labor party in the House of Commons of 1906–10. In the electoral divisions on the Scotch coalfields the party had no success, notwithstanding its new support from the Miners' Federation. The explanation of the defeated candidates was that Scotland from end to end was greatly aroused against the Lords, and that the Liberals and Radicals voted in the way that they felt would tell most surely in the campaign against the House of Lords.

The protectionist propaganda accounted for the loss at Sunderland of a seat held in the previous Parliament by a Labor member; and at Wolverhamton the loss of a second seat held by the Labor party was due to the same cause. The demand for a big navy, pushed with much vigor by the Unionists, accounted for the loss at Chatham, Woolwich and Portsmouth of seats that had been in the possession of the Labor party since the general election of 1906.

One of the interesting incidents of the campaign was the activity of the Anti-Socialist Union in constituencies in which the Labor candidates were Socialists. The Union has for its president Lord Claud Hamilton, chairman of the Great Eastern Railway Company; and for months before the election the Union had maintained a school in London for training anti-socialist speakers. Between September and December there were 596 students, of whom 106 were women. Propaganda work was carried on during the campaign by the graduates of this training school in twenty constituencies.

The Social Democratic Federation has been at work in England since 1881. It contested Parliamentary elections long before the present Labor party came into existence. At the general election of January, 1910, it had seven candidates—all in industrial constituencies. None of them was returned; and the three-cornered contests for which Social Democratic Federation candidates were responsible cost the Liberals a seat in one constituency only, in Burnley.

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One of the new departures in the labor movement in English politics was the nomination in this campaign of six Conservative labor candidates. This movement grew out of the success of a Conservative working-class candidate at a by-election in Bermondsey in October, 1909—the last by-election of the Parliament of 1906–10. Dumphreys, who carried the election, was, according to the *National Review* (December, 1909), the first Conservative workingman to enter the House of Commons. The Bermondsey victory was hailed as giving an "immense impetus to the movement for democratising the Unionist party" and as a revival of the Tory Democracy of the middle eighties, associated with the names of Churchill and Gorst. The National Union of Conservative and Constitutional Associations, at its conference in Manchester in November, endorsed the new movement; and one of the London newspapers raised by public subscription a fund amounting to £6000 to pay the election expenses of the six Tory Democracy candidates. Three were put in the field, at Leicester and Clitheroe and in West Monmouth, to assail seats held by members of the Labor party; and the other three were nominated, at Dewsbury and Swansea and in West Denbigh, in opposition to Liberal members. None of the Tory Democrats was successful. In the aggregate they polled 27,955 votes against 63,729 votes cast for their Liberal and Labor opponents. Dumphreys, whose election in October was regarded by the *National Review* as marking an epoch, was not reëlected; and no working-class representative of the Tory Democracy sat in the new House of Commons.

At the beginning of the new Parliament the Labor party in the House of Commons elected as its chairman Mr. George Barnes, member for the Blackfriars division of Glasgow, for many years secretary of the Amalgamated Society of Engineers. It also transferred itself from the opposition benches to the government side of the chamber. From its early days the Labor party had always sat on the opposition benches. It did so throughout the Parliament of 1906–10, following in this matter the action of the Irish Nationalists, who for nearly thirty years have sat with the opposition regardless of the political complexion of the government in power. In the last Parlia-

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ment (1906–1910) no inconvenience was caused by this arrangement of seats: there were never more than 168 Unionist members, and there was room on the opposition side of the House for the Unionist, the Nationalist and the Labor members. But in the new House of Commons there were 273 Unionists, 83 Nationalist and 40 Labor members. These three parties could not be accommodated on the benches to the speaker's left; and, acting on the suggestion of the speaker, the Labor party reluctantly crossed to the two front benches below the gangway on the government side of the chamber.

There was never any expectation that the Parliament elected in January would survive to achieve much in the way of legislation; the end of this Parliament was in sight from the first week of the session. Balloting for bills, however, proceded as usual in a new session; and the Labor party announced its program by balloting for days for a trade-union-law amendment bill, a provision-of-meals-act amendment bill, a bill for the limitation of working hours to forty-eight a week, a bill for the nationalization of railways, a bill to prevent the eviction of workmen from company-owned houses during trade disputes and a compulsory weighing and measuring bill.

With the meeting of the new Parliament the Liberal Labor group was merged in the Liberal party, and the name disappeared from most of the current parliamentary handbooks. The group had lost many of its members before the new Parliament assembled. Burns had become an official Liberal, and Broadhurst had retired as member for Leicester in the first session of the old Parliament. Cremer died during the lifetime of that Parliament. J. H. Wilson retired at the dissolution; so did Bell. Steadman, Maddison, Nicholls and Rowlands failed of reëlection in 1910; and the group necessarily dwindled in importance when the miners' representatives, who had sometimes been classed as members, were compelled by the vote of the Miners' Federation to join the Labor party.

The Liberal Labor group had its beginnings in 1874, when the miners' unions of Staffordshire and Durham secured the election of Burt and Macdonald to Parliament and thereby showed the newly enfranchised democracy in the boroughs that their

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votes could be made of immediate and practical value. It grew but slowly until 1885; for there was comparatively little opportunity for growth until after the extension of the franchise in 1884 and the redistribution of seats in 1885. Its greatest strength, before the Parliament of 1906–10, was in the short-lived Parliament of 1885–86, in which Gladstone ventured his first Home Rule bill and broke up the Liberal party. In that House of Commons there were fifteen or sixteen Liberal Labor men, nearly all of them, like Burt, Broadhurst, Howell and Arch, trade-union leaders. The group dwindled greatly at the election of 1886 that followed the defeat of the Home Rule bill, and it did not regain the numerical strength it had possessed in 1885–86 until the general election of 1906. Between 1874 and 1910, three of its members were included in Liberal ministries—Burt, Broadhurst and Burns. A number of its members served on commissions; and the statute book bears witness to its success in carrying measures of value to labor or in amending similar measures for the introduction of which the government of the day was responsible.

Among the members of the Liberal Labor group were leaders who had helped to carry trade unionism through the dark and difficult period that preceded the Royal Commission of 1867 and to bring it into the respected and responsible position that it holds in English political, industrial and social life to-day. Trade unionism is now committed to other political methods and policies and to wider aims than those which were associated with the Liberal Labor group of 1874–1910. But the older methods suited the time and the conditions under which they were first brought into service; and the Liberal Labor group has deserved well of the House of Commons and of British democracy. These men pioneered the way; and laboring men in Australia and New Zealand have followed in their footseps, leaving the United States and Canada as the only Anglo-Saxon democracies in which there has been no successful movement for continuous labor representation.

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THE PAYMENT OF LABOR REPRESENTATIVES IN THE BRITISH HOUSE OF COMMONS

THE gravity of the crisis produced by the action of the House of Lords with regard to the budget tends naturally to concentrate public attention in England upon the questions therein involved. Yet, absorbing as is the general interest in the issue of Commons *versus* Peers, even that contention has not obscured the importance of a recent judicial decision, which resembles the larger issue both in affecting the immediate development of party politics and in being concerned with the general theory of representative government. To the practical politician the judgment of the supreme court of appeal in the matter of trade-union levies for the support of Labor members of Parliament counts as a damaging blow to the activities of the Labor party; to the student of constitutional problems it is significant as a contribution to the discussion of the wider question of the true nature of parliamentary institutions.

It was in 1874 that a beginning was made of labor representation in the House of Commons by the election of Thomas Burt, a Tyneside miner, for the borough of Morpeth. In 1880 he was joined by Henry Broadhurst, who had worked as a journeyman mason in the construction of the Parliament house in which he was now chosen to sit. The general election of 1885 gave seats to Joseph Arch, the leader of the agricultural laborers; to the late W. R. Cremer, a compositor, well known as an organizer of peace movements; to George Howell, a bricklayer and the writer of an authoritative history of English trade unions; and to at least four miners. All these were elected as Liberals; for the labor leaders were not yet attempting to form a political party of their own.

The year 1900 was a landmark in the history of labor representation. In that year a working-class socialist organization called the Independent Labor party or the I. L. P. (founded in 1893) combined with a middle-class socialist organization called the Fabian Society (founded in 1884) to secure the co-

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öperation of the trade unions and trade councils in establishing a Labor Representation Committee, commonly known as the L. R. C. The object of this committee was to send to Parliament a group of men pledged to act as a distinct Labor party, with their own "whips" and their own policy separate from those of the traditional political parties of the United Kingdom. At the time of the establishment of the L. R. C. its members were not pledged to socialism, although the socialist section of the body was its driving force. Since 1906 the L. R. C. has adopted the name of the Labor party, a title which must be carefully distinguished from that of the Independent Labor party, which, as already stated, is one of its component sections.

The success of the L. R. C. in arousing the trade unions to the importance of securing direct labor representation in the House of Commons was greatly promoted by the legal decision given against these unions in the Taff Vale judgment of 1903. The ruling that a trade union was a corporate body and, as such, suable in law and liable in damages for illegal acts committed by its officials, convinced the members of these unions of the necessity of making themselves a power in Parliament in order to secure remedial legislation.[1] The effect of this propaganda was seen at the general election of 1906, when, instead of only nine Labor members being returned as in 1900, there was a Labor total of fifty-four. Of these, twenty-nine were directly connected with the L. R. C., eleven with the various miners' associations, and fourteen with other labor organizations. Two successes at by-elections brought the total of Labor members up to fifty-six by the time the 1906 Parliament was dissolved.

The advocates of this policy have been confronted from the first by one difficulty from which an agitation for labor representation in the Congress of the United States would be exempt. Members of the British Parliament receive no payment for their services. How, then, was a Labor member to be supported while attending to his parliamentary duties? The pioneers, such as Mr. Burt, were maintained out of the funds of their own

[1] This was ultimately obtained by the passing of the Trade Disputes Act of 1906.

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unions, in most cases being appointed officials of those unions and thus becoming entitled to a salary. When the L. R. C. was started, with the election of Labor members as its one object, it adopted the plan of a levy upon affiliated societies. By this means it was enabled to pay $1000 a year for the maintenance of each member of Parliament who owned allegiance to it.

It is in connection with the enforcement of this levy upon one of the constituent trade unions that the present trouble has arisen. One of the strongest and most influential unions in the country is the Amalgamated Society of Railway Servants. It was this society that was the defendant in the Taff Vale case. It had also become widely known through the conspicuous ability of one of its officials, Mr. Richard Bell, who became member of Parliament for Derby in 1900 and soon gained the ear of the House as a spokesman of labor interests. This was before the L. R. C. came into existence; and Mr. Bell's expenses were paid out of the reserve funds of his own union. In course of time the Railway Servants' society, like every other trade union in the country, had to consider whether or not it would join the L. R. C. In 1903, at its annual meeting, it decided in favor of such affiliation. From that time, consequently, its members were required to subscribe to the general parliamentary representation fund. This made no immediate difference to the standing of Mr. Bell, who remained a parliamentary representative of the Railway Servants and not of the larger body. Three years later, however, a step was taken which directly affected his position. At its annual meeting in 1906 the Railway Servants' society passed a resolution requiring that all members of Parliament whom it supported should subscribe to the constitution of the L. R. C. (or the Labor party, as it had then become) and obey its "whips." The two other railwaymen's representatives in Parliament agreed, but Mr. Bell refused to comply, mainly because of his disapproval of the socialistic tendencies of the Labor party. He was allowed until the end of the existing Parliament to reconsider his course, but it was made clear that, in the event of his still persisting in his refusal, he would no longer receive any support from the society.

The Amalgamated Society of Railway Servants, however, was

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not permitted to take this course without vigorous opposition from an influential minority of its members. Strong objection was taken to the affiliation of the society to the L. R. C. in 1903, and the disaffection was brought to a head by the attempt made three years later to coerce Mr. Bell. Among the dissentients was Mr. W. V. Osborne, now a foreman porter at Clapton station on the Great Eastern Railway, and secretary for some years of the Walthamstow branch of the society. Finding that his protests within the society were unavailing, he sought (1) a judicial declaration that the rules to which he objected were irregularly passed and *ultra vires*, and (2) an injunction restraining the treasurer of the society from any further application of its funds for the purposes of the Labor party. The case was tried by Mr. Justice Neville in the court of chancery, and was decided against Mr. Osborne.

Mr. Osborne thereupon carried the case to the court of appeal. On November 29, 1908, that court, consisting of the master of the rolls (Sir Herbert Cozens-Hardy), Lord Justice Moulton and Lord Justice Farwell, was unanimous in reversing the decision of Judge Neville. The question of the regularity or irregularity of the passing of the rules may be dismissed here as a technical matter of no general interest. The significant point was the pronouncement of the court upon the general question of the imposition of levies upon members of trade unions for the support of parliamentary representatives. The master of the rolls, in giving judgment that the contested rules were *ultra vires*, pointed out that the securing of parliamentary representation was not one of the objects which it was attempted to secure by the formation of trade unions as legally defined. He could not agree that a trade union, registered under and claiming the benefit of the acts of 1871 and 1876, could, in addition to the objects plainly indicated in the statutory definition of trade unions and in the other sections of the act, also add any other object not otherwise illegal. He was strengthened in this opinion by consideration of the Trade Disputes Act of 1906—the act which was carried to make good the defects in the existing law which had come to light through the Taff Vale judgment. It seemed to him extravagant to suppose that the

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immunities and exemptions conferred by that act could have been intended to apply to any business which a trade union might add to strictly trade-union purposes. For example, if a trade union could run a parliamentary candidate, then in the course of an election it might libel the opposing candidate in the grossest way and yet claim freedom from any legal liability through the statutory immunities enjoyed by trade unions under the Trade Disputes Act. Another member of the appeal court, Lord Justice Farwell, emphasized this point by suggesting that, if the contention of the Railway Servants' society were admitted, it would be possible for the proprietors of the *Times* or any other newspaper to register themselves as a trade union and libel all and sundry without redress.

A question of even wider bearing was dealt with by Lord Justice Moulton in expressing his agreement with the master of the rolls. He took the position that the clause in the society's rules, making parliamentary maintenance dependent on subscription to the Labor party's constitution and obedience to its "whips," was void as being contrary to public policy. He thus gave incidentally a judicial decision of the question, so often debated, whether a member of Parliament is a representative or a delegate. A member of Parliament, this judge said, "has accepted a trust toward the public; and any contract, whether for valuable consideration or otherwise, which binds him to exercise that trust in any other way than as on each occasion he conscientiously feels to be best in the public interest, is illegal and void." Accordingly, if A contracts with B that he will pay the election expenses of B and support him while in Parliament, provided that B will engage to vote as A directs, such an agreement must be void, although A's motives may be perfectly pure and his intention may be to use his power for the public good. Nor would it make any difference if before or at the election the candidate avowed his intention to be thus contractually fettered, for the majority who elected him could not waive the rights of the minority in this respect.

Lord Justice Farwell based his concurrence with his brethren mainly on the policy of the British electoral laws in the matter of securing freedom of election, which, he argued, would be at

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an end if the majority of a trade union could compel a reluctant minority to support by their contributions a party of which they disapproved. He put this hypothetical case: A workman might be forced by his trade union, on the threat of expulsion, to give financial support to one party; a union of masters might compel the same workman, under penalty of dismissal, to contribute to a second party; and the workman himself might wish to support a third party. Under such conditions freedom of election would be reduced to a farce. It would involve the practical disfranchisement of certain constituencies by setting up as their representatives paid delegates bound by contract to those who paid them. Money subscribed for such a purpose could not be regarded as subscribed for a lawful object; though he could see no reason why a constituency itself should not subscribe toward the expenses of its member, provided it did not attempt to buy his vote.

The immediate result of this decision was the granting of the injunction for which Mr. Osborne applied. An appeal was at once taken to the House of Lords as the final court. To avoid misunderstanding, it may be as well to remind the reader that the House of Lords, when sitting as an appeal court, does not consist of the 620 miscellaneous peers, spiritual and temporal, who normally constitute the upper house, but of the lord chancellor of the day, four distinguished judges specially appointed to that house as lords of appeal in ordinary, and such other peers as may have held high judicial office. The hearing of an appeal, except for the presentation of a case by counsel, is in form an ordinary sitting of the house, one of the members of the court "moving" that the appeal before them be allowed or dismissed, and the majority carrying the point. In view of the controversy as to the distinction between the legal and constitutional powers of the House of Lords in legislation, it is of interest to note that the restriction of membership of the house to law lords when dealing with appeal cases is based only upon convention, any lay peer having technically the right to take part. It is impossible, too, to point to any statute which excludes the House of Commons from sharing in these judicial functions of the High Court of Parliament.

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The case was heard on July 22, 1909, and following days, but through various hindrances judgment was not pronounced until December 21. The lord chancellor himself was absent. It is understood that he had been consulted professionally upon the question involved while he was practising at the bar, and that this prevented him from adjudicating upon the case. The peers who constituted the court were Lords Halsbury (ex-lord chancellor), Macnaghten, James of Hereford, Atkinson and Shaw. The appeal was unanimously dismissed, though the reasons given for this decision were not identical.

Three of the judges—Lords Halsbury, Macnaghten and Atkinson—took practically the same position which the master of the rolls had taken. They laid stress upon the purposes stated in the acts which legalize trade unions, and would not admit that the powers of these bodies could be utilized for "ancillary" purposes. Lord Macnaghten said that it was a

> broad general principle that companies incorporated by statute for special purposes, and societies, whether incorporated or not, which owed their constitution and their status to an act of Parliament, having their objects and powers defined and limited thereby, could not apply their funds to any purpose foreign to the purposes for which they were established or embark in any undertaking in which they were not intended by Parliament to be concerned.

This principle, he continued, was not confined to companies established by act of Parliament, but was extended to any society or association formed for purposes recognized and defined by an act of Parliament, for this involved the placing of such a society under some statutory immunity or privilege. Holding the view that for this reason the Railway Servants' levy was *ultra vires*, these three judges thought it unnecessary to express an opinion on the further question whether it was void as being against public policy. It has been noted in some of the press comments that the principle affirmed by them seems to be practically that which determined the judgment of the same court a few years ago on the question of the Free Church of Scotland, and that it involves a refusal to realize that a body politic can have any power of growth or development.

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Lord Shaw, however, confessed himself unable to accept this solution. On this phase of the subject he was undecided. He recalled the fact that, long before the statutes of 1871 and 1876 were in force, trade unions were things in being and their general features were familiar to the public mind. He was not clear that payment of members of Parliament, by societies whose objects embraced the regulation of hours and conditions of labor and the relations of employers and workmen, was a matter so foreign and subversive as to render it inadmissible. He therefore found himself compelled to consider the question in its other aspect and to examine the conditions under which the levy for the support of members of Parliament was to be paid. He called attention to the fact that the political course these members were to take was decided by the larger body, the Labor party, in whose annual conference the representatives of the Railway Servants' society were only one of the constituent sections. Thus the case was not simply that of contributions for the payment of members of Parliament to be selected and supported by the society itself. While the duty of support was laid upon this society, the member's election was to be secured and his policy was to be determined by a federation of societies in which the opinions of this society might be merged or submerged. Still, no separate point had been taken of this subject, and he decided the case apart from it. He went on to say that a member who accepted a seat in the House of Commons under such conditions had put himself under a contract to place his vote and action in subjection to the Labor party, as against what he might judge to be the real interests of the constituency which elected him, or against what he might regard as the true line of service to the whole realm. Such subjection was not compatible with the spirit of the parliamentary constitution or with the independence and freedom which had hitherto been held to lie at the basis of representative government in the United Kingdom. These considerations, his lordship continued, applied not to labor organizations only, but to any other organizations or trusts, or even individual men, who used capital funds to secure the subjection of members of Parliament to their demands. It

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needed little imagination to figure the peril in which parliamentary government would stand if, either by the purchase of single votes or by subsidies for regular support, the public well-being were liable to be betrayed at the command and for the advantage of particular individuals or classes. In this connection Lord Shaw quoted Coke's dictum, that "though one be chosen for one particular county or borough, yet when he is returned and sits in Parliament he serveth for the whole realm." The protections thrown about freedom were largely in the shape of securing the safety of electors against the constraint or interruption of the franchises they enjoyed; but what would be the use of protecting them if the members they elected were subject to a controlling power? The fact that men of honor had felt themselves free to accept obligations similar to those contained in the constitution of the Labor party and that these obligations had not actually proved restraints upon their independence could not be accepted as an argument for legalizing such obligations or for imperiling the broad constitutional guaranties of freedom. Lord Shaw therefore summed up by declaring that, in his opinion, the levy was fundamentally illegal, as being a violation of that sound public policy which was essential to the working of representative government. The pledge was both an unconstitutional and unwarrantable constraint on the member of Parliament himself and an unwarrantable interference with the rights of the constituencies of the United Kingdom.

Yet a third position was taken by the remaining member of the court, Lord James of Hereford. As to the legitimacy of devoting a part of trade-union funds to political purposes he did not pronounce in the negative, like the three judges previously mentioned, nor did he hesitate to speak definitely, like Lord Shaw. He plainly agreed with the contention of the Railway Servants' society on this point. But he was nevertheless compelled to decide against that society, because of his objection to the wording of the rule whereby "all candidates shall sign and accept the conditions of the Labor party and be subject to their whip." This rule, covering as it did any sort of political question, would apply to matters where the interests

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of labor were not concerned—a vote of confidence in the ministry, for example, or for or against the budget. For this reason he could not admit that such a policy had the sanction of law. For this reason he did not think it necessary to enter into the wider aspect of the question discussed in the first court of appeal by Lord Justice Moulton and in the final court by Lord Shaw.

It obviously follows from this judgment of the final court that henceforward the treasurer of any trade union who continues to pay the customary subscription to the funds of the Labor party will be committing an illegal act. This means practically the sweeping-away of the whole financial resources of the Labor party, as distinct from the resources of the various trade unions and other organizations which are constituent elements of this larger body.

Certain means have been suggested for overcoming or evading the difficulty. (1) The Labor members of Parliament might be made officials either of the Labor party or of the trade unions to which they themselves belong, and the financial support they received might figure technically as the salaries attached to their offices. (2) The Labor party might appeal to the loyalty of workingmen throughout the country, asking them to contribute to its funds by voluntary subscriptions instead of by a compulsory levy. Neither of these methods can be regarded as a satisfactory or permanent solution of the problem, especially as, though they might dispose of the objection arising from Lord Halsbury's view of the functions of trade unions, neither of them touches the question of the member's pledge to the Labor party, which would still, in the opinion of Lord Shaw and Lord James, make his contract with the Labor party illegal and void, by whatever means the funds for his support might be raised. (3) As the blow inflicted upon the trade unions by the Taff Vale decision resulted in their gaining the advantages of the Trade Disputes Act, so it is predicted by some that this temporary set-back will bring about the passing of new legislation in accordance with the desire of the majority of trade-union members.

But what form can such legislation take? Proposals to vali-

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date the application to political propaganda of the funds of corporate bodies are scarcely likely to be carried at this time of day. They would open the door to such scandals as were exposed, for instance, in the investigation of the New York insurance companies a few years ago. Various commercial interests already exercise a stronger political influence than is healthy, and public opinion would not tolerate a legislative approval and extension of this practice. Even then, there would remain the problem of reconciling the cast-iron pledge of the Labor member of Parliament with representative principles. It is incredible that any measure could ever be carried which attempted to legalize such a pledge. Yet we may be sure that the rank and file of the labor people will not be content to pay the piper unless they are permitted to call the tune.

Probably, after all, the new legislation that will restore to labor the political opportunities it has now apparently lost will be of a different character from anything that is suggested with a view to overcoming the present difficulty only. The net result of the whole affair will probably be a great stimulus to the movement for the payment of members of the House of Commons out of the public funds and the defraying of at least the official election expenses from the same source. In that event a constituency where there is a preponderant working-class element will be able to elect a workingman as its representative without bringing the trade unions into the matter at all. As his support will come from national and not from local sources, he will be under no pledge for the regulation of his parliamentary course save such as he may voluntarily offer, and that will be given to his constituency and not to any outside body. On several occasions the House of Commons has expressed its approval of this reform, the last being on May 12, 1909, when a resolution to this effect was carried by 242 votes to 92. In the general reconstruction of the British system of government that is bound to result, sooner or later, from the recent action of the House of Lords, the embodiment of this resolution in a statute may be confidently expected.

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ECONOMIC ASPECTS OF THE FRENCH REVOLUTION

UP to the present no thoroughly sound history of the French Revolution has appeared. The works which we possess are marked by a vigorous partisanship, inadequate control of materials and, above all, a failure to understand what the Revolution was. Some advance has been made by M. Jaurès in his *Histoire socialiste*. He has at least placed emphasis on the vital economic aspects of the period. After all, the Revolution was mainly economic; and economic facts, not being so obvious or so easily accessible as the facts of politics or diplomacy, have not received proper attention. It is of the greatest importance, therefore, that the French government has undertaken to place the neglected materials at the disposal of future historians.[1]

This enterprise had its beginning in 1903, when the Chambers, acting on the suggestion of M. Jaurès, empowered the minister of public instruction to appoint a supervisory commission. The task before it presented peculiar difficulties, not only because machinery had to be created to cover every part of France and carry on local investigations according to a general plan, but because, in the absence of any economic history of the Revolution or inventory of the scattered documents, much preliminary work had to be done. Contrary to the usual practice in France, it was decided to adopt a system of decentralization. Control is left in the hands of a sub-commission whose members are largely professional historians; but the sub-commission, which reports periodically to the larger body, has associated with itself committees of about twenty men in the chief towns of the departments, and these, in their turn, have secured local correspondents. Thus the documents are selected, edited and published in the localities to which they refer. The rapid progress which this renders possible quite makes up for the inconvenience of not having the volumes numbered as a series.[2]

[1] In the Collection des documents inédits sur l'histoire économique de la révolution française. For details regarding the project see *American Historical Review*, vol. xiii, pp. 501 *et seq.*; *Revue d'histoire moderne et contemporaine*, vol. vi, pp. 443 *et seq.*, and vol. viii, pp. 545 *et seq.*

[2] All the volumes may be procured from Leroux, 28 rue Bonaparte, Paris, the uniform price being 7 *fr.* 50 *c.* The activities of the commission are noted in its *Bulletin trimestriel* and in *La Révolution française*, a monthly review. The *Bulletin*, which appeared first in 1906, contains not only the instructions of the commission and the official circulars as to the mode of publication, but also documents and articles of

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The program of the commission is decidedly imposing. It includes the whole economic life of revolutionary France: trade gilds and manorial rights, custom duties and taxation generally, wages, movements of population, public relief, exchange, agriculture, manufactures, commerce. The list is too formidable to recite in full; but measuring the vast significance of it, looking it over and considering how little the existing histories tell about such things, we feel as if a discovery has been made, a whole virgin continent of knowledge revealed. It is doubtful if history will owe as much to any other single undertaking as to the publication of the *Collection des documents inédits sur l'histoire économique de la révolution française*. We cannot measure its value merely by the fact that these documents have been made so readily accessible. The indirect results will be far-reaching. The attention of many scholars who have been engaged in the work will continue to be fixed on the revolutionary period and especially on the economic aspects of it; and by them its history will be rewritten. The remarkable circulars sent from the central commission to the departments and from the departments to the communes will diffuse right ideas of historical method into every corner of France. Finally, a general reform will take place in the preservation of documents, particularly in the communal archives, where indifference and carelessness have resulted in serious losses.[1]

Of the twenty-seven volumes so far published competent judges have spoken with the highest approval. The establishment of the text, the illuminating introductions and notes display the accuracy and tireless research of French scholarship at its best. That there would be criticism was foreseen at the outset; for in France the Revolution still has friends and enemies, and the commission is a faithful body of friends. Almost no evidence of partisanship is observable, however. The editing has been done in a scientific spirit. The texts of the *cahiers* for instance—documents which present the severest arraignment of the old régime—are accompanied by extracts from manuscripts in the departmental archives and elsewhere, which often enable us to control them

high importance. These articles deserve particular attention as contributions to our knowledge on matters which have remained until now very obscure: the grain trade, the maximum, the *assignats*.

[1] Note the remarks of M. Mourlot in the first volume of his collection of documents from the municipal registers of the district of Alençon, p. vii. Frequently the mayor or *curé* took charge of the archives, or else a room was rented in some private house. Not only were private and public papers mingled, but losses occurred when the archives were transferred from place to place.

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on questions of fact. The charge that the editors have taken too much liberty with the texts seems quite uncalled for. Conformably with the prevailing usage among editors of modern documents, they have replaced antiquated forms with the current orthography. No one can pretend that such changes obscure the sense in any way; and strangeness in syntax or the construction of phrases has been scrupulously respected. Strict adherence to all the original forms would add little to what we know. That it would make reading almost insupportable is evidenced by the *cahier* of Denneville, which M. Bridrey prints in his appendix without alteration.[1] One advantage there would be. The nearer we get to the actual texts, the nearer we are to settling that vexed question as to the authorship of the rural *cahiers*, as to whether they were compiled by lawyers and professional politicians from the cities or by the peasants themselves. But if we demand the original spelling, why not also the original writing and the clumsy, hesitating signatures?

When completed, the collection will take the form of several parallel series, dealing with such questions as the abolition of the manorial system, the sale of national property, the grain trade. One series will be devoted to the *cahiers*—the statements of grievances which were compiled by the different Estates in 1789 and which throw much light on the economic conditions immediately preceding the Revolution.[2] Hitherto students have depended mainly on the very limited collection given in the first seven volumes of the *Archives parlementaires*.[3] This is notoriously defective and can be the basis of no serious work. But the new collection, judging by the fifteen volumes which have been published,[4] will include all the surviving *cahiers* and will be edited in a scholarly

[1] Cahiers du bailliage de Cotentin, vol. ii, p. 784.

[2] The process of drawing up the *cahiers* is clearly stated by J. H. Robinson in the *American Historical Review*, vol. xiv, pp. 351 *et seq.*

[3] See A. Brette, "Les Cahiers de 1789 et les archives parlementaires," *La Révolution française*, vol. xlvii, pp. 6 *et seq.* Only five volumes are exclusively taken up with the *cahiers*.

[4] These are the *cahiers* of the bailliage of Orléans, C. Bloch, two vols. (1907); of the bailliage of Châlons-sur-Marne, G. Laurent, vol. i (1906); of the bailliages of the generalities of Metz and Nancy, Charles Étienne, vol. i (1907); of the bailliage of Cotentin, E. Bridrey, two vols. (1907); of the sénéchaussée of Angoulême and the siège royal of Cognac, P. Boissonnade (1907); of the sénéchaussée of Cahors, V. Fourastié (1908); of the sénéchaussée of Nîmes, B. Bondurand, two vols. (1908–09); of the bailliage of Blois, F. Lesueur and A. Cauchie, two vols. (1907-08); of the bailliage of Sens, Charles Porée (1908); of the sénéchaussée of Marseille, J. Fournier (1908); of the sénéchaussée of Rennes, Henri Sée and André Lesort (1909).

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and careful fashion. In addition to the fact that the introductions contain, along with much other matter, notable contributions to our knowledge of the process by which the *cahiers* were compiled, we can place full reliance on the authority of the text and check its statements of fact with facts drawn from other sources and marshaled in the notes. M. Porée has prefaced each *cahier* with statistics as to area, population, resources, commons, tithes *etc.*[1] In M. Bridrey's volume—the most admirable of the series—the notes occupy almost as much space as the text. They are intended, not only for purposes of control, but also as a complement to the rapid allusions to facts which are obscure to us today. Thus a bare mention of "*la loi du port d'armes*"[2] is made intelligible by reference to the royal ordinance of 1766 which—with the object of protecting the chase—ordered all but the nobles to deliver up their fire-arms and resulted in odious measures of enforcement.

The value of the *cahiers* has been the subject of a vigorous controversy, one side maintaining that they are interested exaggerations, the other that they are, in the phrase of Tocqueville, the last testament of the old régime.[3] Both sides have relied chiefly on mere assertion, on abstract and sentimental arguments. The question must really be approached from two standpoints, the subjective and the objective. Objectively, in regard to matters of fact, the *cahiers* must be tested by information such as the editors of the present series provide. As M. Bridrey says:

> That is the whole question, and it is only by introducing elements of comparison, drawn from incontestable contemporary documents, that it can be solved . . . Is it necessary to say that from this documented investigation the justification of the *cahiers* will undoubtedly emerge; that the veracity of the *cahiers* will appear, as it has appeared to us, striking and undeniable?[4]

M. Bridrey's conviction is not entirely shared by MM. Lesueur and Cauchie, according to whom the examples of more or less conscious exaggeration and want of information are very numerous.[5] But apart

[1] Cahiers du bailliage de Sens (1908).

[2] Cahiers du bailliage de Cotentin, vol. ii, p. 434.

[3] See Onou, *Révolution française*, vol. lvi, pp. 509 *et seq.*, and vol. lvi, pp. 46 *et seq.* Also *ibid.* vol. xlix, pp. 385 *et seq.*, and vol. xlvii, pp. 6 *et seq.*, and *Revue d'histoire moderne et contemporaine*, vol. viii, pp. 329 *et seq.* The most critical attitude is taken by M. Wahl, Die Notabelnversammlung von 1787 (1898) and Studien zur Vorgeschichte der französischen Revolution (1901).

[4] *Op. cit.* vol. i, p. 70.

[5] Cahiers du bailliage de Blois, vol. i, p. lxvii.

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from the testing of statistics, we must ask: who wrote the *cahiers*, what is their subjective value? It is the opinion of M. Onou, recently expressed,[1] that the peasants, who were crassly ignorant and who spoke a patois or sometimes a foreign language, were left in the hands of the "intellectuals," and that the rural parish *cahiers* were rarely the work of the peasants themselves. On this question of authorship the editors of the new series are not entirely of one mind. The prevailing view, however, is represented by MM. Boissonnade and Bridrey, who are convinced that most of the parish *cahiers* were actually written by the peasants. "At the spectacle of their naïve inaccuracies, their clumsiness, their picturesque orthography", says the former,[2] "it is hardly possible to believe that they are not, for the most part, the real work of popular assemblies." According to M. Bridrey:

> The orthography of the originals cannot leave the least doubt: the greater part of the *cahiers* are written by hands which certainly did not often have to handle a pen; they are written by persons who assuredly had hardly any acquaintance with grammar. The characters painfully traced, the words half-understood and almost always spelled with the distortion which the local pronunciation made them undergo, would be a sufficient proof of it.[3]

All the editors admit the circulation of type-*cahiers*. But it is held that these were not copied servilely. M. Boissonade says, on this point:

> What may be affirmed, after a minute examination of the *cahiers*, is that these documents, even when inspired by general or local types, reproduce servilely neither the substance nor the form. They limit themselves almost always to borrowing the expression of certain common questions, but they present numerous distinct and original demands.[4]

"The *cahiers* express the wishes of the people," says M. Porée; "but the same abuses, the same ills, necessarily provoked the same complaints"; and the magistrates, *curés* and lawyers who often acted as compilers "did no more than transcribe, with more or less elegance, but certainly always with fidelity, the sentiments and the wishes of the people."[5] The editors—and they have greater familiarity with the texts than any of those who have expressed opinions before them—be-

[1] "Les Elections de 1789 et les cahiers du tiers état," *Révolution française*, vol. lvi, pp. 509 *et seq.*, vol. lvii, pp. 46 *et seq.* These articles are an epitome of his Russian work on the same subject.

[2] Cahiers de la sénéchaussée d'Angoulême, p. 12.

[3] Cahiers du bailliage de Cotentin, vol. i, p. 70.

[4] *Op. cit.* p. 160.

[5] Cahiers du bailliage de Sens, pp. xviii–xix.

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lieve, then, that the parish *cahiers* are fairly accurate on points of fact and that they speak with the voice of the peasants.

Of nothing did the peasants make louder complaint than of the manorial rights; and the abolition of these in France and in Savoy forms the subject-matter of two volumes. One of these, edited by MM. Sagnac and Caron,[1] includes about one-twelfth of the documents which passed through the hands of the committees on feudal rights between 1789 and 1793. To students who are unable to work in the national archives the volume is invaluable. Besides the decrees of the committees and their decisions on particular points submitted for settlement, it contains petitions, suggestions and complaints which illustrate the great practical difficulties lying in the way of legislation as well as the attitude of the country toward the decrees and the motives which led lords or peasants to oppose them. These expressions of opinion, classified under convenient headings and elaborately indexed, give a remarkably vivid picture of social conditions. Thus a letter of the lord of Montaut describes very much the same system of popular agitation which has become familiar to students of Irish history.[2] We are not only conducted through the whole maze of manorial legislation; we are shown at every stage what was the real meaning of the legislation and what was its effect.

The abolition of the manorial system in Savoy (1761–1793), as depicted in M. Bruchet's excellent volume, is particularly interesting, considered in relation with the later movement in France. It exercised a large influence upon French partisans of reform. Voltaire, wishing to secure freedom for the serfs of the abbey of Saint Claude; Siéyès, wishing to check the *jacquerie* of 1789; occasionally even the peasants, in the parish *cahiers* and in the representations laid before the feudal committees, drew inspiration from Savoy.[3] The process of redeeming manorial charges, begun in 1762, was completed gradually under the terms of the edict of 1771, the absolutism of the crown and the weakness of the privileged orders making the task simpler than it afterwards proved to be in France. M. Bruchet, in his long introduction, gives a sombre view of the economic condition of the peasants. Occupying only one-fourth or one-third of the land—and that the most sterile[4]—

[1] Les Comités des droits féodaux et de législation et l'abolition du régime seigneurial 1789–1793 (1907). Reviewed in POLITICAL SCIENCE QUARTERLY, vol. xxiii, pp. 690 *et seq.*

[2] Sagnac and Caron, Les Comités *etc.*, pp. 392–397.

[3] Bruchet, L'Abolition des droits seigneuriaux en Savoie (1909).

[4] *Ibid.* p. xxxviii.

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exploited at once by manorial lords and ambitious rulers,[1] they came to live on grass and to resemble skeletons.[2] A large part of the adult males —from an eighth to a half—spent most of the year in foreign cities, where money could be earned to meet the heavy taxation.[3] This picture M. Bruchet has executed in the manner of MM. Karéiew and Champion. Someday, perhaps, an artist of this school will turn his attention to the peasants of Quebec. In the middle of last century and under a democratic form of government they had to pay dues to manorial lords, taxes to the provincial and federal governments and tithes to the clergy; they too held unfertile lands and cultivated by routine; and they spent the winters making shoes in New England factories. Why has no one told the world—and them—about their misery?

It is not to the spoliation of manorial lords alone that the small landed proprietors of France owe their position. The documents published by M. Charléty for the department of the Rhone and by M. Moulin for the department of the Bouches-de-Rhone show that the sale of national property played, in that respect, a very important role.[4] No longer need we rely on the ingenious guesses of the older historians. From actual examination of the record of sales it appears that the lands were broken up into small parcels and distributed among the agricultural class and the *petite bourgeoisie*.[5] Nothing very precise can be said as to the professions or social position of the purchasers, as the records are usually silent on these matters. It is interesting to compare the valuation of the church property, made first by the church authorities and later by the municipal officers and their experts, with the prices which it brought at the sales. Owing chiefly to the depreciation of *assignats*, property sometimes sold for five, ten, even twenty times its valuation. According to the figures of M. Moulin an *assignat* of 100 livres was worth 94*l.* 50*s.* in January, 1791; 21*l.* 15*s.* in January, 1795; and only 15*s.* at the close of the latter year. Thus a payment of 31, 913*l.* spread over the years 1791–1795 was equivalent to 13,971*l.* and a payment of 220,649*l.* in 1795 was equivalent to 28,564*l.*

Three bulky volumes contain the minutes of the committees on agriculture and commerce to which the successive assemblies (1789–1795)

[1] *Op. cit.* p. xii. [2] *Ibid.* p. xxiv.

[3] *Ibid.* p. xxvii. According to an estimate of 1776 there were 40,000 in Paris and Lyons alone.

[4] Documents relatifs à la vente des biens nationaux; Département du Rhône, S. Charléty (1906); Département des Bouches-de-Rhône, Paul Moulin, two vols. (1908–09).

[5] See the analysis given by M. Moulin, pp. xlv–lxxi.

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entrusted the business of drafting their decrees.[1] Before these committees came a mass of varied information, sometimes taking the shape of reports from departmental administrations or chambers of commerce, more often unsolicited memoirs and petitions, extraordinary in number and in range of subject-matter. The committee of the Constituant, wishing to retain the confidence of individuals, decided not to confine attention to matters of general import, but to receive these private representations—and to answer them. In seventeen months 2143 were received[2]; and they read like so many new *cahiers*, only more explicit and more personal. Looking over the thirty-one which came before a meeting in November, 1789, we find discussions on the cultivation of rice in Piedmont, the obstructions to lumbering, the production of flour from potatoes, the decay of French manufactures, the linen trade, the establishment of an agricultural college, the remission of taxes, the fertilization of the moors of Bordeaux, the discovery of a perfect system of weights and measures.[3] Hardly less varied are the matters covered by the decrees: colonies and canals, iron mines and slaughter-houses, customs duties and postal arrangements. The question of foodstuffs—the circulation of grain, the law of the maximum, the provisioning of Paris and other cities—came constantly before the committees. In vain the Legislative, by the decree of January, 1792, ordered the free circulation of grain and forbade exportation. Forestalling of grain and flour increased. The scarcity and dearness of foodstuffs became so general that forty-one departments demanded relief from the minister of the Interior, who had to buy great quantities of wheat abroad. The policy of the state is well illustrated by a decree of 1793.[4] Stored grain, a record of which is kept by the municipal officers, can be sold only in public market, unless the purchaser secures a certificate to the effect that he is not engaging in the grain trade and that the quantity he is buying is necessary for the consumption of his household. Not only may officials require grain to be brought to market, but the minister of the Interior may requisition grain for the use of departments where scarcity prevails. Heavy penalties are provided for those who sell or buy above the maximum, this being fixed by the average price of the

[1] F. Gerbaux and Charles Schmidt, Procès-verbaux des comités d'agriculture et de commerce, de la Constituant, de la Législative et de la Convention, vol. i, 1789-1791 (1906); vol. ii, 1791–1792 (1907); vol. iii, 1792–1795 (1908). A fourth volume will complete the series and will contain an elaborate index. The committees were separate except under the Constituant.

[2] Procès-verbaux des comités, vol. i, p. ix.

[3] *Ibid.* vol. i, pp. 61–67.

[4] *Ibid.* vol. iii, pp. 122–126.

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first five months of the year and sinking monthly till harvest time. The malicious spoiling or burying of grain is a capital offence.

The disposal of the commons—pasture, forest, waste—assumed so large a place in the public mind and in the deliberations of the committees that separate treatment has been given to it. One volume takes the question up to the decree of 10 June, 1793[1]; another will consider the application of the decree, and how the Convention, moved by new ideas, reconsidered its earlier policy and abrogated the more revolutionary dispositions of the law. The documents presented by M. Bourgin give exact information as to the state of the commons and, above all, permit us to follow the evolution of opinion among the different classes of society and among the deputies of the Legislative and the Convention. The first division of the book includes, in addition to a large number of petitions, the opinions of the departmental administrations as to how the country felt on the matter of dividing the commons and how agriculture would be affected. Quite evidently the greater number were favorable to it. The second division is occupied mainly with the early legislation: the decree of August 14, 1792, which raised some hostility by ordering that the commons should be divided after the next harvest without fixing any mode for effecting the division; and the decree of October 11, 1792, in which the Convention revealed a hesitation and uncertainty which heightened the popular dissatisfaction and still further disillusioned the peasant. The storm of protest, coming from both official and private sources, is illustrated by the 250 pages of documents which constitute the third division. Finally, following a number of reports and decrees, we have the famous measure of June 10, 1793. Altogether, the book is a magazine of economic ideas and affords striking indications of the development of democratic policy. "Make the poor see that you are doing something for them," a notary writes to the Convention, "Remember that this class forms the greater part of the nation . . . If you delay, the rich, who will be hostile to the Revolution, will offer them help."[2] In the summer of 1793, moved by arguments such as this, the Convention bought up the peasants. The price was the confiscation of manorial dues and the division of the commons.

The commission which was appointed by the celebrated Estates of Dauphiné before they separated in January, 1799, addressed to the communities of the province a set of twenty-four questions. These dealt

[1] La Partage des biens communaux, Georges Bourgin (1908).

[2] *Ibid.* pp. 624, 625.

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with such matters as area, population, public expenditure, the nature of the soil, the supply of grain, and even inquired into the frequency of epidemics and the availability of midwives. Abbé Guillaume has brought together the replies which came from a part of Dauphiné corresponding roughly to the present department of Hautes-Alpes,[1] and has utilized fiscal documents in the departmental archives to control them and yield supplementary information. Nowhere, we are told, can a group of documents be found with a character so authentic.[2] In each commune the answers were made only after a serious examination, conducted by experienced and competent men, who had been elected, as a rule, by the general assembly of inhabitants. Their tone is very lugubrious.

> The dearness of cattle and the want of nourishment for them are the reasons why many individuals are in misery; there are even those who have nothing to sow, for want of capital.[3] . . . Our soil is partly gravel; the other part is marl, but in general very barren . . . In a year of abundance the harvest can suffice for nourishment without anything over; if the harvest is moderate, we make up the deficiency by purchasing grain in the neighborhood.[4] . . . More than a third of the people have to beg their bread outside the community.[5]

These wails, however, come from the Hautes-Alpes, and by no means characterize the situation in the rest of agricultural France.

Perhaps the most valuable sources for the history of the Revolution are the municipal registers. In them appear the official minutes of the various municipal bodies, the decrees of the central legislature and of the departmental and district administrations, and information on a great variety of topics. They tell about the planting of liberty trees, the equipping of armies, the seditious movements (such as federalism), personal insecurity, the anti-catholic movement and a thousand other things. M. Mourlot has filled two volumes with documents of an economic bearing taken from the municipal registers in the district of Alençon, Normandy.[6] There was little official activity in the Norman municipalities till 1789. The cities of Alençon and Sens, having redeemed the offices, had set up a general council; but the assemblies of

[1] Recueil des réponses faites par les communautés de l'election de Cap au questionnaire envoyé par la commission intermédiaire des états du Dauphiné, 1908.

[2] *Ibid.* p. xiii.

[3] *Ibid.* p. 217.

[4] *Ibid.* p. 222.

[5] *Ibid.* p. 231.

[6] Recueil des documents d'ordre économique contenus dans les registres des délibérations des municipalités du district d'Alençon, two vols. (1907-08).

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the rural communes which since 1788 were expected to meet weekly and keep registers separate from those of the parish *fabrique*, transacted almost no business. The great importance of the registers begins with the establishment, under the law of December 14, 1789, of a uniform system of government in all the communes: a municipal bureau, which was composed of the mayor and other officials; a general council, which was formed by adding notables to the municipal bureau; and the popular assembly, which convened only on special occasions. The menace of scarcity after each harvest, growing economic and social unrest, the responsibilities of foreign and civil war made the activity of these bodies prodigious. The intensity of public life is illustrated by the brief, incisive statements of the registers. Nowhere can better evidence be found of the spirit with which French people put themselves at the disposal of the national government and responded to the demands made upon their patriotism. They enlisted in the armies, they subscribed to the patriotic contributions, they sent shirts and shoes to the volunteers "gone to the frontiers in defence of the fatherland." Questions of assessment and taxation are naturally prominent. Prominent also is the subject of food supply. We learn much of the attempt to fix prices and to regulate the amounts of sales and purchases, the vexatious domiciliary visits for the prevention of fraud, the violation of the law of the maximum, and the angry protests which its partial enforcement provoked. In one case at least the citizens, declaring that they had to choose between obedience and starvation, proceed to nullify the law.[1]

As this great series expands, we are brought to feel, more and more, the deficiency of our general knowledge of the revolutionary epoch and the incompleteness of existing treatises upon it. In the Revolution modern democracy, or at least its ideal, was born. Whatever excuse there may be for passing lightly over the life of the common people at earlier times, we must probe deep into it in the age of Marat and Robespierre. We must know what the future sovereign was thinking, what he was wearing, what he was eating; we must know his relations with the classes above him, the privileged and the *bourgeoisie*. For this the new collection is invaluable. A new field is opened to all those who are interested in measuring the effect of economic conditions upon politics or philosophy.

E. M. Sait.

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[1] Recueil des documents, vol. i, p. 160.

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REVIEWS

Roman Economic Conditions to the Close of the Republic. By EDMUND HENRY OLIVER. University of Toronto Studies; History and Economics. Toronto, Canada, 1907.—xv, 200 pp.

This study was suggested, the author tells us, by Professor Seligman's review[1] of Henri Francotte's *L'Industrie dans la Grèce ancienne*, and Dr. Oliver attempts to do for Roman economic history what Francotte did for the economic history of Greece. In Book I, "To the Revolution," the economic development of Rome is traced throughout the period of the kings. Book II, "The Period of Struggle," takes us to the beginning of the colonial extension of Rome's political power. In Book III, "From Rome's First Mediterranean Expansion to the Close of the Republic," the author describes the development of the system upon which the Empire was founded.

The work throughout is based on the original sources, and the notes give full references to the authors whose works throw any light on economic conditions; particularly Cato, Varro, Vergil, Livy, Dion, Columella and Pliny. For nearly every statement the reference to the classic source is given in a footnote, so that the reader is sure that he is always on a firm foundation. The references to the modern literature of the subject are less full, but the author acknowledges his indebtedness to his predecessors by including their works in a full bibliography given in the introduction. At the close of each period there is a summary of the author's conclusions, and the divisions and subdivisions of the subject are indicated in the body of his text throughout, as helpful devices for those who may wish to use his results.

His conclusion as to the first period, drawn from the examination of the stock tradition in the literary sources, from the institutional survivals and from archæological and philological evidence, is that the "firm conviction of the Roman writers that pastoral conditions preceded the agricultural stage" at Rome is well founded. In the succeeding agricultural period of the early republic the independent economy of the *fundus* was the central feature; and the revolution by which the kings were expelled was not altogether political but to some extent economic. The Licinian-Sextian laws, which according to the

[1] POLITICAL SCIENCE QUARTERLY, vol. xvi, pp. 538–540.

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stock theory terminated the struggle between the privileged and non-privileged, are shown by the author to have been a practical nullity on the economic side, because they could not do away with the *latifundia;* and the expansion of Roman territory which soon followed simply postponed the consideration of the land question to the days of the Gracchi.

The author's conclusions in regard to this period of territorial expansion, complicated about the middle of the period by the outbreak of the revolution under the Gracchi, are that Rome's great increase in wealth was due neither to agriculture, because the period is most strongly characterized by the ruin of the small farmer and the shifting of the population to the city; nor to commerce, which was at best largely a commerce of food importation; nor to industrial activity, because this was too closely connected with slave labor to be economically advantageous; but simply to the shifting of the wealth of the provinces to the central state. While this process enriched the coffers of Rome it sapped the moral vigor of the Roman people.

It may be said that these conclusions are not especially novel; but in firmly establishing them by an examination of all the authorities from the economic standpoint, the author has done a valuable piece of work.

J. H. DRAKE.

UNIVERSITY OF MICHIGAN.

Ertrag und Einkommen auf der Grundlage einer rein subjecktiven Wertlehre. Ein wirtschaftstheoretischer Versuch. By ROBERT LIEFMANN. Jena, G. Fischer, 1907.—viii, 72 pp.

The central thought of the little pamphlet is that economic science has to do not with technical production, but with psychological relations between men and goods (page 42). A theory of value must be purely subjective. The marginal-utility theorists imply this view, but halt on the ground of an objective value theory (page 36). The greatest error in current economic discussion is the confusion of technical yield (production) with economic yield (value and income). Modern business methods lead to the objectifying of value, but the true grounds of all valuations and of all prices are the estimates made by the consumers (page 41); in last analysis it is always wants that are the causes of the complex business of technical production (page 45).

The confusion between economics and technique taints all current discussion. Purely technical concepts are applied to economic phenomena, and economic concepts, such as value and capital, are applied to technical questions (page 44). "Products" and "goods" must be

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clearly distinguished (page 46). "Value" and "capital" are used in two senses, the one technical and the other economic. Professor Liefmann would limit the concept of capital to the price-expression of goods and he would do away with the usual distinction between rent-yielding and interest-yielding agents as concretely differing classes of things. He would use "capital" only as an expression in terms of value or price (page 16), and as a corollary he connects distributive theory with price, not with distributive justice.

These ideas are developed with much independence of thought and vigor of expression; but most of them have, to students of American economics in the past decade, a familiar sound. The author is not conservative, compromising or eclectic. So far from minimizing his departure from the ideas current in German economics, he takes issue from the first "with nearly everything that heretofore has been taught on some of the most fundamental phenomena of economics, on the whole theory of income, and on the greater part of the theory of value" (Introduction, page v).

Just as the book was appearing, the author made a journey to the United States, where already views were widely held similar to those which he had independently developed. While the value doctrine still dominant in America is of the objective kind rejected by Professor Liefmann, yet, from the earlier writings of Clark and Patten to the present, some American economists have been developing the subjective aspects of economic theory. In this spirit contributions taking various forms have been made by Carver, Commons, Daniels, Davenport, Fisher, Keasbey, Kemmerer, Seligman, Veblen—to mention but a few of the names that at once occur. In a goodly number of American colleges a thoroughgoing subjective theory of distribution had been taught for years before Professor Liefmann's book appeared. To those in accord with these growing tendencies, the significance of this book is therefore not so much in the absolute novelty of the ideas as in the evidence it brings of a cosmopolitan trend of thought toward this deeper and truer analysis of economic theory.

The reviewer, agreeing almost entirely with the essential doctrines presented, may venture to suggest some limitations in, and dissent from, the author's treatment. Professor Liefmann stops short of a complete subjective theory by a long step, in that he has no concept of "psychic income" such as has been so widely accepted in America. Hence unreal contrasts and false reasoning; as when he declares that a loanable consumption good, such as a house, is not a means of production (page 20), and that money spent for music and travel is wealth spent

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for uneconomic ends (page 38), and that an amateur gardener is not working economically because he lacks the consciousness of a limited supply of goods! (page 42), and that the amateur carpenter's plane is not capital and his products are not economic goods.

Even more surprising and disappointing to our modern subjective theorists must be the author's explanation, or lack of real explanation, of the interest problem. For him there is here no special problem (page 18); loan interest arises because the owner of money can, by buying something that will yield a rent, get an increase of income equivalent to the loan interest (page 21). Surely this is pre-Böhm-Bawerkian superficiality. Why does the purchased good involve in its price a discount on its future uses? The problem is to be solved only by the capitalization theory, of which no hint appears in this book.

Assent must be withheld also from the extreme proposition that economics is a purely subjective science, having nothing to do with technical production (page 42 *et passim*). The need is rather to separate the subjective from the intermingled objective parts of economic study, and to treat them more fundamentally.

Granting that these exceptions are well taken, American students must yet be greatly interested in a book of such independent thought, directed toward a unified, logical formulation of the deeper value problem, and contributing thus notably to the international agreement which must be the evidence of ultimate truth in this realm of abstract theory.

FRANK A. FETTER.

CORNELL UNIVERSITY.

Railroad Promotion and Capitalization in the United States. By F. A. CLEVELAND and F. W. POWELL. New York, Longmans, Green and Company, 1909.—xiv, 368 pp.

Railroad Freight Rates. By LOGAN G. MCPHERSON. New York, Henry Holt and Company, 1909.—x, 441 pp.

The first of the books under review is the first volume of a history of railway finance that was begun a decade ago by Dr. Cleveland. After the preparation of an economic history of the United States was started under the auspices of the Carnegie Institution, Professor B. H. Meyer, who has charge of the transportation section of that history, secured the collaboration of Dr. Cleveland, and a small grant was made to him from the funds of the Carnegie Institution to assist in the collection of materials. At this time Dr. Cleveland obtained the co-operation of Mr. Powell. The present volume is the product of their joint labors. The completed work will comprise three volumes.

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The volume opens with two chapters presenting the history of transportation before the beginning of railroad construction. A third chapter gives an account of the successive experiments in England and America by which the locomotive was made a technical success. The history of railway promotion and capitalization is begun in chapter four; but while the first three chapters are, strictly speaking, largely irrelevant, they are so instructive as to add much to the value of the volume as a contribution to the history of transportation. The book gives a clear account of the relation of economic conditions to the early promotion of railways in the United States; it describes the state funding of turnpike, canal and railway enterprises; and it explains the methods adopted by corporations in appealing for financial support. The forms and extent of individual, local, state and federal subsidies and other aid are considered as fully as ascertainable facts permit. The two especially strong features of the book are the account of the methods of private promotion, and the explanation, by analysis of the facts of the economic and political life of the people of the United States, of the method and scope of local, state and national aid to highways, canals and railways. The discussion of the relation of state banking to railway promotion is particularly illuminating.

The closing chapter is devoted to bibliography. It presents a good account of source materials and also contains a list, forty-two pages in length, of the most important books and papers dealing with American railway transportation. An exceptionally full index adds to the value of the volume as a work of reference.

The second work under review is to be welcomed, because of the facts presented. A thorough and trustworthy work upon railroad freight rates in the United States was much needed. Mr. McPherson was well equipped for writing such a book. Having spent a number of years in the railway service and having put the results of his investigations into courses of lectures at Johns Hopkins University, he was able to discuss freight rates with first-hand knowledge of the subject and with appreciation of what is important and what unimportant.

The most valuable contribution made by Mr. McPherson is in chapters seven and eight, which deal with the rate systems in force in different parts of the United States. These chapters give by far the best discussion of rate structures that has yet been put into print. It should be noted, however, that Mr. McPherson's account is brief, and that more detailed studies, such as Professor Ripley's explanation of rates in trunk-line territory, are needed to give the student of transportation adequate information regarding American railway freight rates.

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The volume under review would have been more valuable had the chapters dealing with commercial geography been omitted, and had the space thus saved been given to a fuller account of rate structures.

One regrets to find that Mr. McPherson has the traditional misconception of the Granger legislation. Monographic studies that have recently appeared and others that are in course of preparation are at last throwing clear light upon the Granger legislation, its origin and consequences; and future historians of railway transportation will certainly modify the popular notion of that legislation. The current view is well expressed in Mr. McPherson's statement that "it was soon found that the law in Iowa, forcing all the tariffs of the Iowa railroads down to the lowest competitive level, reduced their revenues to the point of impoverishment and deprived the state of capital needed for its development." Similar statements have been made by other authors regarding the Potter law in Wisconsin, but the evidence does not sustain this view.

Although Mr. McPherson is disposed to be critical of government regulation of railways, particularly as it has been practised by the several states, he upholds the Interstate Commerce Commission. "That there should be a tribunal to which a shipper may have recourse as a last resort goes without saying. Its very existence tends toward a diminution of injustice, and to the exercise of greater care on the part of the transportation companies in adjusting their charges." This statement comes at the end of a chapter in which there is an admirable analysis of the complaints made to the commission, their adjustment by that body and the final settlement of cases by the courts and the commission. In the next to the last paragraph in the book the author states that "the conduct of transportation by the railroads of this country has undergone a radical and comprehensive reformation, brought about in part by the working of economic law and in part by legislation." These quotations are sufficient to show that, while the author is not critical of the railroads, he is fair in his judgment of government regulation.

Unfortunately, the volume gives many evidences of hurried writing. This doubtless accounts for the lack of system in the outline of the work. Were the book rewritten, the presentation could be made more concise, and the matter could be better integrated. That Mr. McPherson is able to write well is shown by his previous volume upon *The Working of the Railroads*. It is to be hoped that this larger and far more important volume may yet receive the literary finish which he gave to his earlier book.

EMORY R. JOHNSON.

UNIVERSITY OF PENNSYLVANIA.

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L'Expansion des banques allemandes à l'étranger: Ses rapports avec le developpement économique de l'Allemagne. By GEORGES DIOURITCH. Paris, Arthur Rousseau; Berlin, Puttkammer and Mülbrecht, 1909.—798 pp.

Das deutsche Wechseldiskontgeschäft. Mit besonderer Berücksichtigung des berliner Geldmarkts. By W. PRION. Leipzig, Duncker and Humblot, 1907.—xiii, 298 pp.

Das russische Bankwesen. By RUDOLF CLAUS. Leipzig, Duncker and Humblot, 1908.—xv, 162 pp.

Banking in Germany has passed through three stages of development. During the first, extending to about the year 1848, the business was confined almost exclusively to private bankers and to a few state banks of issue, of which the bank of Prussia was the chief. During the second period, extending from 1848 to 1870, corporations entered the field, greatly extending the scope of the business as well as its constituency and largely increasing the number of institutions. Most of the great banks of the present day date from this epoch. The third period, extending from 1870 to the present day, has been characterized by the concentration of about eighty per cent of the business in the hands of eight great institutions, with head offices in Berlin, and by the expansion of these institutions into foreign territory. This latter phase of the development, which is also the last in point of time, is the subject of the first of the books here under review.

M. Diouritch's book is divided into two parts: in the first the subject is treated synthetically; in the second, analytically. An introductory chapter traces the development in outline through the three periods above mentioned; a second indicates its causes; a third, its general aspects, financial and economic; and a fourth, the methods by which it has been accomplished. In the second part a chapter is devoted to each of the great banks, and further single chapters describe the banks which these have established to represent them in South America, the extreme Orient, central Europe and the remainder of the Orient, and Africa respectively.

The book is written in a clear and interesting style, and it abounds in references to the literature of banking and commerce in Germany, including monographic material regarding particular institutions and special phases of the subject not generally known to American students. A large part of the material for the book was derived from a study of balance sheets and from personal investigation of the great Berlin in-

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stitutions by the author on the spot. Excellent facilities seem to have been placed at his disposal by the officers of these institutions. The book also contains a number of valuable tables and summaries, for example: one on pages 120, 121, showing the extent of the participation of each of the great banks in the the various branches of German industry; another on pages 126, 127, showing the methods of their participation; and another on pages 140–144, indicating the constituent elements of the different banking groups.

A valuable feature of the work is the author's attempt to make clear the peculiarities of the special phase of German banking development which he is treating, and to connect these with the peculiarities of Germany's commercial and industrial development. The banks of both England and France have extended their operations into foreign territory, the former through special institutions independent of the great joint-stock and private banks which do most of the domestic business, and the latter through the establishment of foreign branches by the Comptoir d'Escompte and the Crédit Lyonnais. With the exception of branches in London, established by the Deutsche Bank, the Dresdner Bank and the Discontogesellschaft, the Germans operate in foreign countries chiefly through banks independent in form, but in reality mere creations of the great Berlin institutions, established by them and controlled by them in their own interests even after a portion of the stock has been disposed of to private parties. To a much greater extent than the English and the French, the German foreign banks also participate in the industrial life of the countries in which they are located. Indeed, the promotion of industrial enterprises of various kinds, in the interest always of the mother country, is one of their principal functions.

In explanation of this latter peculiarity, M. Diouritch emphasizes the fact that the scope of the operations of the great German banks at home is broader than that of the English and French banks. Participation in the flotation of foreign loans and the promotion and even the control of large industrial enterprises of all kinds are regular parts of their business. In foreign countries, therefore, they represent not only German banking interests but German industrial interests of all kinds. Indeed, they may not improperly be regarded as the pioneers of Germany in foreign countries, their activities frequently having important political as well as financial and economic bearings. This combination of commercial banking with financiering and enterprise-promoting is regarded by M. Diouritch as a result of the comparatively recent development of the deposit side of banking in Germany and of the great field

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for financiering and enterprise-promotion created by the rapid development of German industry and commerce since the establishment of the Empire.

American students will find this book useful, not only on account of the thoroughness with which it treats the special topic to which it is devoted, but also because of the detailed information it gives concerning the history, business and methods of the great German banks. Part two contains an account of the history, organization and expansion of each of the eight great Berlin institutions, information not heretofore easily accessible.

M. Prion's book will interest persons desirous of information concerning the technique of German banking, particularly on the investment side. It treats of their discount business in detail and with a considerable degree of thoroughness.

In the first four chapters M. Prion analyzes what he calls the private discount business on the bourse, that is the discount business on the open market as distinguished from the special and peculiar business of each bank with its own customers. On the supply side, he distinguishes between professional and non-professional discounters. Under the former head he includes the Imperial Bank, the private banks of issue, the great credit banks and private bankers, the royal "Seehandlungs-Gesellschaft" and the socalled "Preussenkassa"; under the latter, the mortgage banks, the insurance societies, various kinds of savings institutions, big commercial firms, corporations and private capitalists. He next makes a careful analysis of the characteristics of the paper available for discount and follows this with an account of the organization of the market and of the various discount rates. Chapters v to viii inclusive are devoted to a detailed description of the discount business of the Imperial Bank, the Seehandlungs-Gesellschaft, the Preussenkassa and the great credit banks of Berlin; and the remaining five chapters treat in the same manner the discount business of the four remaining banks of issue, the provincial banks, the private bankers and various associations called into existence by the credit needs of the humbler classes, prominent among which are the Schulze-Delitzsch institutions and the socalled "Sparkassen."

M. Prion's treatment is concrete and thorough, evincing firsthand knowledge of the subject. In the preface he tells us that his materials were derived chiefly from personal experience and inquiry among bankers, brokers, merchants and all classes of specialists in this field. His monograph furnishes abundant evidence of this direct contact with his subject-matter as well as of keen insight into the details and technique of the banking business.

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Among the interesting matters illuminated by him are the nature and effects of the competition between the Imperial Bank and the great Berlin institutions, which has been growing in severity in recent years; the rapid growth of the business in bank acceptances and the dangers lurking therein; the reasons for the close affiliation of the chief provincial banks with the big Berlin institutions; the substitution of cash payments for bills of exchange in many lines of business, and the way in which this is accomplished through the big banks and their connections; and the growth of bank deposits in Germany.

Both M. Prion's book and that of M. Claus on banking in Russia are published under the auspices of Professors Schmoller and Sering in their *Staats-und sozialwissenschaftliche Forschungen*. Both books do credit to their authors and to the series in which they appear—a series which includes a number of excellent monographs on banking subjects.

M. Claus's account of banking in Russia is brief but comprehensive and clear. He first describes the state institutions which play the leading rôle in the banking business of that country. They include the State Bank, which is the center of the entire system, a bank primarily concerned in assisting the peasants in the purchase of land; a land bank for the nobility; and state and municipal savings and pawn institutions. Part II is devoted to institutions of credit based on the mutual principle. Of these there are in Russia a considerable number. Some were established by municipalities, some by private individuals, others by associations of various sorts. For the most part their operations are confined to their own members, from whom they receive deposits and to whom they grant loans, and who are mutually responsible for the obligations of the institution. Joint-stock and private banks are treated in Part III, and small credit institutions in Part IV. These latter promote saving among peasants and the poorer classes in the cities and in times of need render them assistance in the form of credit. Part V, entitled "Division of Labor among Russian Banking Institutions", treats the entire subject from the point of view of the kinds of business transacted rather than from that of the institutions involved. In the first chapter of this part the Russian media of exchange are analyzed and described under the heads, "bills of credit," "deposits" and "accounts current"; in chapter ii are treated discounts, loans on security and note issues; in chapter iii, short-time credit for the agricultural classes; and in chapter iv, the mortgage and pawn business.

The influence of the government over every phase of Russian banking is clearly revealed in this monograph. The State Bank, which is

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owned and controlled absolutely by the government, extends a helping and frequently a guiding hand to all other institutions. Those which are not owned and controlled by the government are regulated by it through ordinances issued by the Department of Finance or some other department, or through ukases, and as a rule are publicly inspected and supervised. M. Claus's treatment indicates that under present conditions this is probably desirable and possibly necessary. Whenever much latitude has been allowed to private enterprise in the banking business in Russia, serious irregularities have followed, and the government has been compelled to intervene in order to prevent heavy losses and to safeguard the people's interests. Governmental intervention has also resulted in lowering the rate of interest and in preventing widespread exploitation of the peasants and small tradesmen and even of the nobility.

Joint-stock banks, into whose hands the greater part of the commercial banking business of western Europe has fallen in recent times, have also appeared in Russia. The first one was established in St. Petersburg in 1864, but most of them date from the seventies. On January 1, 1905, there were thirty-eight institutions of this class in the entire Empire, not including branches of the Crédit Lyonnais in St. Petersburg, Moscow and Odessa. Seventeen of these banks are capitalized at five million or more rubles, sixteen at between one and five million rubles, and five at less than one million rubles. The largest, the St. Petersburg International Commercial Bank, has a capital of twenty-four million rubles and a reserve fund of twelve million rubles. Each of these banks has a relatively large number of branches and agencies in the Russian Empire, and three of them, the Russo-Chinese Bank, the Moscow International Bank and the Russian Bank for Foreign Trade, have branches in foreign countries. The Russians have also established a joint-stock bank in Teheran, Persia, and, according to M. Claus, have seriously considered the establishment of one in London. While these institutions and strong private banking firms have not developed as rapidly as have similar institutions and firms in Germany and elsewhere, M. Claus shows that, in the aggregate, they are doing a large business and seem destined to increase in relative importance.

The importance to Russia of institutions for the extension of credit to the agricultural classes is emphasized by M. Claus. According to the census of 1897, only 13.4 per cent of the population of Russia lived in towns, and in European Russia 84.16 per cent of the entire population were peasants, of whom very few could read or write.

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State and private banks for making loans on landed securities have naturally, therefore, received a good deal of attention in Russia. Their success in solving the agricultural problems of their country has, however, been small—chiefly, according to M. Claus, on account of the ignorance and consequent backwardness of the peasants. Popular education he considers a crying need in the Russian Empire; but the outlook for it is not hopeful, because the government fears that public schools would be used as the means of spreading revolutionary ideas.

W. A. SCOTT.

UNIVERSITY OF WISCONSIN.

State Insurance: A Social and Industrial Need. By FRANK W. LEWIS. Boston, Houghton Mifflin Company, 1909.—253 pp.

Industrial Insurance in the United States. By CHARLES RICHMOND HENDERSON. University of Chicago Press, 1909.—429 pp.

These two books have a common point of departure, in that they are the outcome of the growing interest shown in the United States in the question of industrial insurance. Mr. Lewis's *State Insurance* is avowedly an argument in favor of the introduction into the United States of compulsory workingmen's insurance; and the first chapter of Professor Henderson's work—which might well have been an introduction, since it is the keynote to the volume—is entitled: "The Extent and Nature of the Demand for a Social Policy of Industrial Insurance in the United States."

Mr. Lewis's argument, briefly summarized, is as follows: (1) Every laborer is entitled to a living wage, including support in periods of sickness and in old age. (2) Measured by this standard, the wages of a great part of the working people are inadequate. (3) The best method by which support in sickness and in old age can be secured to the laborer is by a compulsory system of insurance. (4) The cost of the insurance system should be borne entirely by the laborers.

The reader, even if already prepossessed in favor of a compulsory system of industrial insurance, will not be greatly strengthened in his opinion by the argument here presented. The author is uncritical in his use of authorities, and many of his statements are so extreme as to be unconvincing. His criticism of existing insurance institutions, *e. g.*, friendly societies and industrial insurance companies, is marked throughout by a strong bias. According to Mr. Lewis, the English friendly societies are bankrupt, trade-union benefits are insecure, the industrial companies exploit their policyholders for the benefit of the

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stockholders, and in the old line companies "the story of greed, fraud and betrayal of trust" is appalling.

The best parts of the book are the chapters in which are described the German system of workingmen's insurance and the English Workmen's Compensation Act. Here Mr. Lewis is clear in exposition and accurate in statement. He is at his worst when he attempts economic reasoning; as, for example, in the chapter on "Incidence," where he attempts to prove that the placing of the cost of insurance entirely on the workman would "necessarily lead to a readjustment of wages wherever inadequate to conform to the requirements of a real living wage."

Professor Henderson's volume is an enlarged version of his "Die Arbeiter-Versicherung in den Vereinigten Staaten von Nord Amerika," published in 1907 as a part of Dr. Zacher's monumental *Die Arbeiter-Versicherung im Auslande*. The chief addition is an introductory "Summary of European Laws on Industrial Insurance," which will be found useful as a conspectus. The aim of the author is to survey the agencies and institutions for industrial insurance now existing in the United States; and he deals in succession with local relief societies, trade unions, fraternal societies, private insurance companies, the insurance plans of firms and corporations, including railway corporations and municipalities, and the pension system of the federal and state governments.

The book would have gained greatly in compactness through an elimination of part of its contents, for a considerable part of the matter has only the slighest if any connection with the subject in hand. The lengthy descriptions of the federal and state military pension systems and the greater part of a summary of the factory laws in force in the United States throw little if any light on the problems connected with industrial insurance. The great merit of the book is that, in a comprehensive way, it brings together the available material concerning the existing institutions for workingmen's insurance. The author has not attempted in any considerable degree to carry on independent research. He has been content, and perhaps wisely, considering the magnitude of the task, to digest the studies which have already been made in parts of the field. As a result, many of the chapters are very meager, but the book will prove highly useful as a starting point for further much needed inquiries into the various agencies for insurance. It will also aid in drawing popular attention to the failure of existing institutions to meet the needs of the situation.

GEORGE E. BARNETT.

JOHNS HOPKINS UNIVERSITY.

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Insurance Against Unemployment. By DAVID F. SCHLOSS. London, P. S. King and Son, 1909.—viii, 132 pp.

Mr. Schloss's little book gives an excellent account of those forms of unemployment insurance in which the contributions of the insured are supplemented by subventions, either from charitable associations or (the more usual case) from municipal, provincial or state authorities. The development of such insurance has been very rapid in recent years. When, in 1898, W. F. Willoughby wrote his admirable work on *Workingmen's Insurance*, only a few unimportant experiments had been made. Even in 1904, when Mr. Schloss made a comprehensive report to the British Board of Trade on "Agencies and Methods for Dealing with the Unemployed in certain Foreign Countries," the systems of assisted unemployment insurance were of small practical importance, but since that year the practice has received great extension. The present volume, in which Mr. Schloss brings the information contained in his report down to date, contains, therefore, much new information.

The earlier schemes of assisted unemployment insurance originated in certain Swiss municipalities between 1895 and 1901. Similar systems were organized in Cologne in 1896 and in Venice in 1901. Under the "Swiss plan" the same premium was paid by all of the insured irrespective of occupation, and the administration of the fund was in the hands of the municipality. All of these schemes have been abandoned, with the exception of those at Berne and Cologne, and they are of small importance, being in effect forms of poor relief for workers affected by seasonal unemployment. Moreover, the "Swiss plan" has received in recent years no extension.

The beginning of the great expansion in assisted unemployment insurance dates from the establishment at Ghent, in 1901, of a system under which the trade unions of that city were enabled to increase their unemployed benefits through the receipt of a grant for this purpose from the municipality. The history of unemployment insurance since 1901 consists of the adoption of the "Ghent plan," not only by other municipalities, but also by several national governments. Legislation providing for public subsidies to associations organized for the purpose of furnishing unemployment insurance to their members was enacted by France in 1905, by Norway in 1906 and 1908, and by Denmark in 1907. In all of the municipalities and countries which have adopted the "Ghent plan," any group of workmen in a trade may organize for the purpose of insuring themselves against unemployment and may receive the governmental subsidy, but practically the

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only groups so organized are the trade unions. Both in Denmark and Norway the governments have attempted, as yet with slight success, to force the unions to admit non-unionists to participation in the unemployment insurance.

Mr. Schloss draws from his survey the following conclusions:

(1) Any successful system of unemployment insurance must be organized by trades; in the first place, because the risk of unemployment varies widely among different trades, and the combination of all the insured at a single rate drives away the persons employed in those trades where the risk of unemployment is slight; and secondly, because the trade-association method reduces the chances of fraud. The practical result of this conclusion is that unemployment insurance must be managed through trade unions, since it is impracticable to establish trade associations merely for such insurance.

(2) The subsidies should be national, at any rate in England, since the trade unions and the scale of their unemployed benefits are national.

(3) The system of unemployed benefits can best be operated in connection with labor registries.

GEORGE E. BARNETT.

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Statistik und Gesellschaftslehre. By GEORGE VON MAYR. Band III: *Sozialstatistik* (*Moralstatistik*, *Bildungsstatistik*, *Wirtschaftsstatistik*, *politische Statistik*). Erste Lieferung. Tübingen, J. C. B. Mohr, 1909.—260 pp.

The first and second volumes of this monumental work were published in 1895 and 1897 and were reviewed by the late Richmond Mayo-Smith in this QUARTERLY.[1] Those who are interested to inform themselves regarding the writer's conception of statistics and the general scope of his entire work will find assistance in these earlier reviews. It is a pleasure to welcome this first part of the third volume and to learn that the second part may be expected within the current year. A third part will complete the volume and the entire work, but it is not to be expected until after the results of the German census of occupations and industries taken in 1907 have been published.

The primary division of the work as a whole is into theoretical statistics, which occupies the first volume, and practical statistics, the theme of the second and third volumes. Practical statistics falls into

[1] Vol. x, pp. 475–485, and vol. xiii, pp. 161–163.

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five divisions: (1) vital statistics or demography, occupying the second volume; (2) moral statistics, (3) educational statistics, (4) economic statistics, (5) political statistics, which together will fill the third volume. The part now published differs from the preceding two in not containing the whole of any one division. It is devoted to moral statistics, but that topic will extend into and be finished in a subsequent part. This pamphlet is in a measure supplementary to the second volume, amplifying, for example, the discussion of natality statistics in that volume (pages 165–200) by sections on still births, on decrease in the birth-rate and in the fecundity of marriages, and on illegitimate births, topics which are largely, if not predominantly, moral. It contains also an extended discussion of divorce statistics, a topic not treated at all in the second volume in connection with demography. Perhaps an idea of the quality of the work is best conveyed by the free and somewhat abridged translation of a paragraph.

§ 27. *Field of divorce statistics.* Statistics of the terminations of marriage by death, the normal mode of dissolution, belong to vital statistics; terminations by legal decree or divorce in the largest sense belong to moral statistics. The latter do not include cases of intentional and permanent discontinuance of cohabitation as husband and wife, although they are of interest for moral statistics. A leading example of this sort is the deserted wife. Regarding such cases the carefully analyzed returns of a census afford some information, but it cannot be properly interpreted at present, because instances of temporary separation at the date of the census cannot be distinguished from instances of permanent desertion, and because not a few mothers of illegitimate children, especially in cities, report themselves falsely as married. For this reason I pass the subject by with the remark that the statistics of Berlin have made important contributions to it. For example, Boeckh showed that in 1885 the number of divorced women in Berlin was 2824 and the number of deserted wives was 6457 [pages 183-184].

This work as a whole, in the range of its topics, in its critical acumen and judicial balance, in its grasp upon the work of predecessors and contemporaries, is unequaled among extant statistical treatises. No doubt English and American students who need a system of statistics in three volumes are able to use it in its present form. If it could be translated and at the same time abbreviated and simplified by a competent hand and with the author's assistance for the many who are interesting themselves in statistics and who lack a comprehensive and recent English manual, a great service would be rendered to a large body of scholars and no little stimulus given to the study.

WALTER F. WILLCOX.

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Introduction to Public Finance. By CARL C. PLEHN. Third edition. New York, The Macmillan Company, 1909.—xv, 480 pp.

In bringing out the third edition of his *Introduction to Public Finance* Professor Plehn was confronted by the usual but always difficult problem—to save as much of the old book as possible and at the same time not unduly to enlarge the new edition. The task would not have been so great five years ago; but to-day the revival of interest in tax matters and numerous investigations of tax problems have greatly increased the material available in this branch of public finance. This Professor Plehn has recognized to some extent in his discussion of American taxation, as set forth in chapter v. The book is some hundred and twelve pages larger than the first edition. The major part of the new material is found in the chapters dealing with the question of property and personal taxation, chapters viii and ix of Part II. In view of Professor Plehn's experience in the Philippines and his activity in connection with the California tax commission, the reader naturally expects a fairly complete discussion of the practice of taxation. This, however, appears to be the weakest side of the book. The reviewer does not mean to say that the book is unsatisfactory, for it is at present, in his judgment, the best text on public finance for general use. It is, of course, true that no one book can cover the field of public finance, but an American book ought to reflect the progress that has been made in the United States toward newer and better methods of taxation. The material presented in the report of the California tax commission was of unusual value, but very little of this has been brought into the book itself—apparently because its introduction would mean a material change in the original text.

One looks in vain in the index for any reference to the modern methods of taxing railroads or to the changes that have taken place in assessment, as seen particularly in the city of New York. Neither is there any reference made to the work of tax commissions, nor any considerable explanation of the new forms of franchise taxation that have been adopted, particularly in New York, Pennsylvania and Maryland. As one turns the pages he is surprised to find valuation tables now twenty years old. The continued use of these tables is justified by the author on the ground that the conditions revealed by recent investigations are not materially different from those of 1890, and that the comments made at that date are practically true to-day.

The chapter upon taxes, fees and rates has been enlarged by a discussion of the income tax as illustrated by English and Prussian ex-

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periences. In the third chapter has been introduced a good deal of new matter upon the single tax; the discussion is much more sympathetic and, for that matter, more analytical and scientific than in the first edition. Chapter vii, Part II, dealing with customs duties, has been brought down to date by a discussion of the Dingley and Payne bills. Part IV, on "Financial Administration," has been enlarged by a chapter on the financial administration of war, illustrated by the experience of the United States in the war with Spain. The bibliography has been increased—after ten years—by six titles.

Professor Plehn's book, good as it is, shows very clearly the need of a text on taxation in practice, which, if used in connection with his *Public Finance*, would make an admirable course in the larger phases of the collection of revenues and their expenditure.

FRANK L. MCVEY.

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La teoria dei tre poteri nel diritto costituzionale del Nord-America. By G. B. KLEIN. Volume I: Parte generale. Florence, A. Rossini.—1909, xvi, 480 pp.

In this work, the author of *Il Referendum legislativo* presents the first volume of an elaborate study of the theory of the separation of governmental powers in American constitutional law and history. The volume deals not only with the legal aspects of the doctrine but treats also of the influence brought to bear upon governmental practice by such political questions as slavery and the protective tariff. The primary object, however, which the author has in view in this volume is the presentation of the legal application of the theory of the separation of powers as actually found in the constitutional documents, not only of our federal government but also of the states, together with a consideration of the light thrown upon the theory by the writings of Calhoun, Webster and others.

In an introductory chapter the author traces the sources of the theory from Aristotle and the Roman writers down through the later thinkers, especially Locke, to Montesquieu. He then enters into a particular examination of the sources, both ideological and positive, of the federal Constitution of 1787, and gives a detailed account of the mediate and immediate historical conditions and preliminary movements leading up to the adoption of that instrument. He shows what interpretations were placed upon the principle of Montesquieu in the constitutions of the various American states, as modified by the principle of the supremacy of the legislative power. In many instances, the author

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gives evidence of the strong influence which the writings of Jellinek have exerted upon him. Thus he is disposed to follow the savant of Heidelberg in the reaction which the latter has led against the exaggerated influence attributed to Rousseau by the French school, though he thinks that Jellinek has gone too far in denying to the doctrines of Rousseau any influence upon the American bill of rights. The positive sources of the federal Constitution he traces from English, American and Dutch origins. The last-named he holds to be of minor significance, and the importance of the English sources, the more ancient and general, he finds it impossible to appreciate with any accuracy without reference to the modifications wrought in American institutions by the experience derived from the working of colonial and state governments.

The work is expanded to somewhat excessive length owing to the necessity under which the author labors of explaining in detail many matters which would be too obvious or too familiar to require such treatment in a work addressed solely to American readers. This result is also due in part to the broad conception which he entertains of the scope of his subject, causing him to expand it at times into a consideration of our political institutions in general. The most serious shortcoming, however, which the work exhibits is its strong anti-national leaning. In his chapter on the juridical value of the term "people" in the federal Constitution, after pointing out that the American people are not organized naturally in the Constitution and have no direct legislative or constituent functions, he revamps the time-honored arguments to show that the phrase, "We, the people," in the preamble, has no national significance. In discussing the position of the Senate, he predicates that the fundamental principle upon which the upper house is based is that of federalism, and he holds that, in participating in the treaty-making and appointing powers, the Senate acts not merely as a consultative body but also as the representative of the states (pages 320 *et seq.*). He admits, however, that in legislation the work of the Senate is no longer based on the principle of federalism. Adopting Jellinek's definition of sovereignty, he concludes that that attribute cannot be denied to the states of the American Union.

> They are confederated states, which have delegated a part of their own powers to a common central government; and the limits of action of this government they can enlarge or restrict in the constitutional manner at any time. In doubtful and uncertain cases, not well defined in the Constitution, the presumption of power is in favor of the confederated states; the *onus probandi* rests upon the central government [page 463].

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The strong anti-national position which the writer thus assumes appears to be due, first, to the influence of Jellinek and the federalist writers of Germany and, secondly, to the exaggerated importance which he attaches to the manner in which the federal government was set up, in its bearing upon the present nature and position of that government.

The work gives evidence of an amount of painstaking research which is distinctly creditable to one working at a distance from some of the important sources of information. In the subsequent volume which the author promises to issue, the political evolution of the doctrine of the separation of powers will be more fully dealt with, and particular attention will be given to the influence of politics upon the enlargement and restriction of the three powers in such cases as are left doubtful or omitted entirely in the original Constitution.

J. M. MATHEWS.

PRINCETON UNIVERSITY.

Die Strafrechtspflege in Amerika. Mit Ausführungen zur deutschen Strafprozessreform. By ADOLPH HARTMANN. Berlin, Franz Vahlen, 1906.—xii, 335 pp.

Partly to gain suggestions and points of view for the problem of the reform of German criminal procedure, but mainly for the sake of making a study in comparative jurisprudence, Judge Hartmann spent more than a year in the United States in 1904 and 1905, investigating our courts and our prisons, examining our laws and absorbing impressions of our civilization. His travels carried him from New England and the Middle States to Louisiana and California, and his alert observation raised in his active mind many questions not very closely connected with his principal theme; witness his query whether the architectural style of the first Napoleonic empire was not inspired by Josephine's attachment to the American colonial style (page 317).

The most important single contributions which America has made to penology are, in his opinion, the indeterminate sentence, the probation system and the children's courts, which are clearly described in the latter part of the book (pages 250–276); but even more important, because more fundamental, is the general attitude of the American democracy towards crimes and criminals. Abandoning the European theory that every criminal should be punished, the American people demand only that enough criminals shall be punished to vindicate the legal order. This attitude is explained, in part, by the economic value of human material in a new country with a sparse population, in part by the kindly fraternal spirit of American democracy. The author

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thinks, however, that we have come nearer to solving the problem how the little thieves may be let loose for their own good and the general welfare than to solving the problem how the big thieves may be put out of business (page 114).

Judge Hartmann is thoroughly familiar with English law and procedure, and he is keenly interested in tracing the differences from the English model that have developed, through the influence of different social and political conditions, in the judicial organization and criminal procedure of the United States. Partly because, in the gradual settlement of this country, local government generally developed before state government, and partly because the local community was rather a free association than an organ of government, there were many "reversions" to the agencies and methods of popular justice. So there appeared, west of the Alleghanies, in the early part of the nineteenth century, elected judges, a jury much more independent of the bench than in contemporary England, and a grand jury which "appears at times to be an organ of society rather than of the state" (page 100). Some of these tendencies had manifested themselves in the seaboard colonies in the seventeenth century, but they had been checked, in a measure, by a fuller reception of English law.

In the United States, the "defensorial" characteristics which differentiate English criminal procedure from the "inquisitorial" procedure of continental Europe have been exaggerated. Continental procedure asks: What are the facts? English procedure: Is there evidence to justify a conviction? American procedure: What can be done for the accused? In England, prerogative courts with inquisitorial processes were always lurking in the background; in the United States, at the beginning of its independence, "bulwarks were thrown up to protect the accused against a dreaded inquisitor who has never advanced to the attack" (pages 127, 128). That the writ of error, in England a remedy of limited application and rarely used, has become in the United States a regular method of securing a new trial, is partly due, in the author's opinion, to the exaggeration of the "defensorial" idea and partly to the development of accurate stenographic records of evidence, rulings and exceptions (page 172).

As has been sufficiently indicated, Judge Hartmann reads his law in the light of history and social science, and much that he has to say about the habits and temper of the American people deserves the serious consideration of our social scientists.

MUNROE SMITH.

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RECORD OF POLITICAL EVENTS

[From November 3, 1909, to May 1, 1910]

I. INTERNATIONAL RELATIONS

AMERICAN RELATIONS.—Before April 1 the minimum **tariff rates** of the Aldrich-Payne law (see last RECORD, p. 737) were extended to all countries by successive proclamations of the president. Only in three cases was there serious question of applying the additional 25 per cent *ad valorem* which constitutes the maximum rate. Germany, after long negotiations, was admitted to minimum rates; the question of her severe, sometimes almost prohibitory restrictions against American cattle and meats was set aside for separate treatment in the future. France, refusing agreement with regard to some four per cent of imported articles, made compensating concessions in other directions. The most critical situation arose with Canada over her export duties on pulp-wood and the extension, by virtue of Great Britain's "favored nation" policy, of the low rates on French imports to thirteen other states which had made no concessions to secure them. No settlement was reached by the special tariff commission which visited Ottawa in March, but, after a conference with the president at Albany, Canadian ministers took the matter up in Washington and conceded reductions on articles in which American firms compete with the favored nations in the Canadian market. As an outcome of these negotiations there is prospect of a general readjustment of duties by means of a reciprocal treaty.—It is announced that the International Court of Arbitration will meet at the Hague on June 1 to adjust the Newfoundland **fisheries** dispute between the United States and Great Britain (see last RECORD, p. 733).—In November the United States asked **Cuba** to explain her commercial treaty with Spain, under which the latter was reported as giving a preference of forty per cent.—On November 18, following the execution by order of the **Nicaraguan** government (see *infra*, p. 378) of Cannon and Groce, two American citizens supposed to be commissioned officers in the insurgent forces, the United States practically recognized the belligerency of the revolutionists, demanded an explanation, and ordered gunboats to Nicaraguan ports. On December 1 Secretary Knox recognized the Estrada government, handed his passports to Señor Rodriguez, chargé d'affaires of the Zelaya government in Washington (intimating, at the same time, that the State Department would be glad to receive further unofficial communications through him), and informed him that those responsible for the execution of Cannon and Groce would be held personally accountable. The secretary's letter was severe in its condemnation of the Zelaya government, under which "republican institutions have ceased to exist except in

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name, public opinion and the press have been throttled, and prison has been the reward of any real patriotism." Zelaya was also accused of keeping Central America in turmoil and of repeatedly and flagrantly violating the conventions. On December 23 the new President Madriz was warned that he would be held responsible for the safety of Americans in western Nicaragua. In March the United States refused the request of Estrada that it should guarantee the fairness of a general election to decide between his revolutionary government and that of President Madriz.—In December **Mexico** sent Señor Creel as a special envoy to Washington and declared that the grant of asylum to ex-President Zelaya of Nicaragua was in no way an unfriendly act to the United States.—In March a mob at Bogota, **Colombia**, stoned the American legation and tried to wreck the property of an American-owned street railway. Apology was made to the American minister by the Colombian minister of Foreign Affairs.—In February Professor Lammasch, of the University of Vienna, was chosen third arbitrator in the dispute between the United States and **Venezuela** growing out of the claim of the Orinoco Steamship Company against the latter country (see last RECORD, p. 733).—In December, responding to pressure by the United States, **Chile** agreed to settle the long-standing Alsop claim, regarding the extent to which Chile was bound to assume the pecuniary obligations resting upon territory which she acquired in 1881. King Edward accepted the invitation of the two governments to act as arbitrator.—The German ambassador, Count von Bernstorff, speaking in Philadelphia last November, declared that **Germany** had no designs on territory in the western hemisphere and that its naval development was designed only to protect a growing commerce.—In December the new ambassador from **Japan** presented his credentials to President Taft. Japan's request that negotiations be opened for a new treaty, evidently in order that all her treaties with foreign powers should expire at the same time, was refused by the United States in March, as the present treaty had still a year to run.—In January Marquis Confalioneri was appointed Italian ambassador to the United States.—The **Central American Peace Congress**, in session in February at San Salvador, adopted resolutions favoring the gold standard, a system of tariff reciprocity for the five republics, the unification of their consular services abroad, and the compulsory use of the metric system.—**Costa Rica** and **Panama** signed a protocol on March 20, stating the facts upon which Chief Justice Fuller of the United States was to arbitrate their boundary differences.—The **Peruvian** government has been having several serious frontier disputes with its neighbors. Negotiations with **Bolivia** (see last RECORD, p. 733) were still pending on May 1. The treaty with **Brazil**, fixing the boundary from the Javary River to the Acre, was ratified by the Peruvian Congress on January 11 and by Brazil on April 26. Ill-feeling engendered in **Ecuador** by another boundary dispute, which was submitted for arbitration to the king of Spain, resulted in April in riotous attacks upon the Peruvian legation and consulate at Quito and Guayaquil and in the suspension

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of diplomatic relations. For a time war seemed imminent, but Peru announced its determination to abide by the arbitral award. Several South American newspapers stated their conviction that the trouble between Peru and Ecuador was caused by Chile. The Peruvian province of Tacna, with an area of 8688 square miles, has been administered by Chile since the defeat of Peru and Bolivia in 1883. It was then arranged by treaty that in ten years the people should decide by vote whether the territory should be Peruvian or Chilean. The vote has never been taken. In March, Chile ordered Peruvian priests in Tacna to leave the province. Peru then closed its legation in Chile and left its interests in the care of the representative of the United States. Peru made a formal demand in April for arbitration.—The discovery in March of a secret treaty between **Brazil** and **Uruguay** led the Argentine press to believe that a recent loan made by Brazil to **Paraguay** was for the purpose of establishing a triple alliance against **Argentina**.—The tunnels of the Trans-Andine railway, linking Argentina and **Chile** together, were formally completed on November 27.—It was announced in April that the *Compagnie Transatlantique* would shortly inaugurate an express service between Argentina and **France**.

EUROPEAN RELATIONS.—The agitation in **Crete** for annexation to Greece, following the withdrawal of the international troops (see last RECORD, p. 732), was increased by the decision of the Greek Boule to summon a Greek National Assembly for the purpose of revising the constitution, to which the Cretans announced their intention of sending representatives. The Porte informed the four protecting powers that it would regard such Cretan elections as a *casus belli*. The Greek government, in a semi-official statement of February 2, declared that its policy would be pacific; that the National Assembly would not meet before December, 1910; and that the Cretans should not elect deputies. The consuls of the four protecting powers in Crete stated in March that their governments would use force, if necessary, to prevent Cretan participation in the Greek Assembly.—Relations between **Turkey** and **Bulgaria** have been strained. The inhabitants of southern Bulgaria were aroused by the drastic measures employed by Turkish officials toward their countrymen in Macedonia. On February 1, 20,000 Turkish troops were called out for practice, and soon afterwards it was reported that 40,000 Bulgarian troops were concentrating at Kostendil, three hours from the frontier. Between February 21 and March 7 six collisions occurred between Bulgarian and Turkish guards. These relations were greatly improved in March and April by the visits of King Ferdinand to the tsar and to the sultan, by the offering of mutual apologies, and by the negotiation of a commercial treaty.—It was suggested by several influential European journals that the tsar had advised the Bulgarian king to adopt this pacific attitude. At any rate, an understanding was reached in April between the governments of **Russia** and **Austria-Hungary** for the joint maintenance of the *status quo* in the Balkans. —King Peter of **Servia** visited the Russian court in March, it being the

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first reception accorded to him by any European power since his accession. His subsequent visit to the sultan was reported to be for the purpose of marrying Crown Prince Alexander to Princess Chadi, the daughter of Abdul Hamid.—King Manuel of Portugal in November visited Spain, Great Britain and France. The **Anglo-Portuguese** treaty of arbitration concluded in 1904 was renewed for five years.—The popularity of the close alliance between **Germany** and **Austria-Hungary** was demonstrated by many incidents attending the visit of Archduke Franz Ferdinand to Emperor William in November.—The visit in February of a deputation of the French Parliament to the Russian Duma called forth reciprocal assurances of the strength of the **Dual Alliance**.—Prince Henry of Prussia, while on a visit to London early in February, expressed the hope that the English nation would repose confidence in the German sovereign and government. —According to *Le Temps*, the German government notified **France** in March that if an increased tariff on German imports should be enforced, **Germany** would at once institute corresponding reprisals. It was contended that such action would abrogate the provisions of the peace treaty of 1871, which guaranteed to France most-favored-nation treatment in perpetuity.

AFRICAN RELATIONS.—The troubles in the Riff district of **Morocco** (see last RECORD, p. 730) had so far subsided by December 5 that Spain could order home 4000 reservists from Melilla, and by December 25 practically all the leading tribesmen had formally submitted to General Marina. The Spaniards resumed work at the mines in January. A French ultimatum, demanding prompt payment of foreign creditors and the grant of permission to purchase land under the Algeciras Act, was accepted by the sultan in March.—Germany offered objections in November to the cession by Belgium of a strip of **Congo** territory to Great Britain in order to eliminate serious engineering difficulties in the building of the "Cape to Cairo" railway. It was finally agreed that the railway need not be completed on British soil.—A conflict occurred in March between the **Portuguese** and **British** officials engaged in delimiting the frontier near the Zambesi River in Portuguese East Africa.

ASIATIC RELATIONS.—International rivalries in **Manchuria** were again in evidence. The Chinese government in November called the attention of the powers to Japanese violations of the "open door," by means of discriminating freight rates on the South Manchurian railway and the importation of Japanese goods through Dalny and Port Arthur. On December 4, China protested against Russian aggression at Harbin, referring to the arrangement of 1896 between China and the Russo-Chinese Bank, which created the Chinese Eastern Railway and which, it is maintained, gave to Russia no political but only business rights. The Russians claimed not only exclusive jurisdiction over the railway but also legislative authority over the citizens of the towns along the line. M. Kokovstoff, Russian minister of Finance, stated on December 12 that his

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government desired a satisfactory adjustment of the question and would consider two proposals: either that the general administration be entrusted to the consular body, reserving for the railway the right to police its own premises, or that China purchase the railway, although Russia would prefer to wait until the completion of its own Amur railway. On January 4 a memorandum sent by the United States government to the Russian Foreign Office was made public, proposing as a solution of the Manchurian problem the neutralization of the railways by their sale to China, financed by an international syndicate. The supervision of the railways would then be in the hands of the powers responsible for the financial arrangements, and they would make sure that the lines were conducted on a purely commercial basis and not used for political or strategic purposes. This proposal of Mr. Knox differed from that of M. Kokovstoff in that it included the Japanese as well as the Russian railways. Great Britain and France jointly advised China not to proceed with the Chinchow-Fu and Aigun railway scheme (see RECORD of June, 1908, p. 356) without the approval of Japan and Russia, and accepted the American secretary's proposal only on condition that it was agreeable to their respective allies. Both Russia and Japan took a firm stand against the American proposal. On February 16, Japan agreed to withdraw its objections to the building of the Chinchow-Fu-Aigun railway, provided two conditions were observed: first, Japan to participate in financing and constructing the line; second, China to engage to build at some future date a connecting link between the new line and the South Manchurian railway. A new Russian proposal for the construction of another trans-Manchurian line further westward, striking the trans-Siberian railway near the Urals, did not meet with favor in diplomatic circles.—**China** and **Japan** signed a postal agreement in February, by the terms of which the former recovered its monopoly of mail-carrying on its own railways, together with equal rights over the Japanese railway.—Although China recognized by treaty in 1887 the jurisdiction of Portugal over **Macao** and its dependencies, no boundary was ever fixed. Negotiations were disturbed during the past year by agitators at Canton, who urged the people to resist by force of arms any concessions made by Pekin. The Portuguese commissioner, General Machado, insisted that his country was entitled to sixty square miles, which the Chinese reduced to two. No conclusion had been reached when, in March, the British government intimated to China that it would consent to no infringement of Portugal's rights.—The expulsion of the Dalai Lama from **Tibet** by the Chinese government (see *infra*, p. 392) brought forth joint representations by Great Britain and Japan on the necessity of maintaining order and tranquillity on the Anglo-Tibetan frontier.—The **Russian** government announced in January that its troops would remain in **Persia** until the Anglo-Russian loan had been negotiated with adequate provisions for foreign financial administrative control in Persia.

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INTERNATIONAL CONFERENCES.—During November an **International Geographical Commission** met at London to consider steps for the preparation of a new uniform map of the world. Twenty-four delegates were present, representing Great Britain, France, Germany, Austria-Hungary, Russia, Italy, the United States, Canada and Australia.—The General Assembly of the **International Institute of Agriculture**, representing forty-six governments, met at Rome on December 11.—Secretary Knox addressed in January a circular note to the powers proposing that the jurisdiction of the **International Prize Court**, authorized by the Hague Peace Conference of 1907, be extended so as to make it a permanent court of arbitral justice. The International Prize Court, as at present constituted, is composed of fifteen judges serving for six years, eight of whom are to be chosen from the larger maritime countries, Great Britain, France, Germany, Austria-Hungary, Italy, Japan and the United States, and the remaining seven from the other nations. Secretary Knox desired a permanent court, versed in international law, which could decide any question susceptible of arbitration, in times of peace as well as of war, whereas the prize court, as at present constituted, presupposes war.—In the same month, the **International Bureau of Peace** at Brussels addressed to all governments a proposal to readopt and extend to dirigibles and aeroplanes the provisions of the Hague Peace Conference of 1899, forbidding the dropping of explosives from baloons during war.

II. THE UNITED STATES

THE ADMINISTRATION.—On November 10 **President Taft** returned to Washington after a tour of almost two months, during which he traveled 13,000 miles and made 266 speeches (see last RECORD, p. 734). Speaking before the Republican Club of New York on Lincoln day, he declared that "there was nothing in the platform of the Republican party to indicate that there would be a downward revision of the tariff" and that the Payne Act was "the best customs law that has ever been passed." On February 24 he announced that to redeem the party pledges Congress should pass in the present session a postal-savings-bank bill, amendments to the interstate commerce law, conservation measures, an injunction bill and a bill granting statehood to Arizona and New Mexico.—By April over 100,000,000 cubic yards of material had been removed in the excavation for the **Panama Canal.**—The **Pinchot-Ballinger controversy** over the administration of public lands (see last RECORD, p. 735, and *infra*, p. 370) resulted, early in January, in the dismissal of the chief forester, who, in a letter to Senator Dolliver, had described Glavis as "the most vigorous defender of the people's interests" and admitted that officials in the forestry service had been actively connected with the newspaper attacks upon the secretary. As his successor, the president appointed Henry S. Graves, head of the Yale Forestry School.—In December the secretary of the Interior withdrew from all forms of entry all vacant public lands designated by the

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Geological Survey as probably containing oil and gas. In February 4,000,000 acres of the public domain formerly included in the forest reserves were opened to settlement by the secretary of Agriculture, and more than 2,000,000 acres of coal lands in Wyoming and Montana were withdrawn from the public domain by the secretary of the Interior.—Collector Loeb has continued the investigation into the **customs frauds** at the port of New York. The first revelations, coming over two years ago, led to the conviction of the sugar trust and the restoration of over $2,000,000 of duties fraudulently withheld (see RECORD of June, 1909, p. 361); but the complicity of government weighers was not fully proved. Under promise of immunity and continuation in employment, assistant weighers brought evidence against Musica, a cheese importer, who was sentenced in November to a fine and imprisonment. In January four former employees of the American Sugar Refining Company were sentenced to a year in the penitentiary. In February the company paid to the government over $600,000 for back duties on underweighed sugar importations. During the investigation more than eighty assistant weighers were dropped from the service.—An inquiry into the **cost of living** (*infra*, p. 370) was undertaken by the Department of Agriculture in January. Statistics were published relative to the advance in the cost of meat in all the great producing and consuming sections of the world.—In December the secretary of the Treasury issued an order eliminating state, city and railroad bonds from the securities which may be accepted for **deposits of public moneys** in the national banks.—On November 26 the president approved the regulations for the collection of the **corporation tax** (see last RECORD, p. 737) submitted to him by the secretary of the Treasury. Writing to the secretary in February, he pointed out that the publicity feature of the tax law could not be observed without a further appropriation of $50,000 by Congress.—In November an executive order provided for appointment to the lesser places in the **diplomatic service** by competitive examination, for records of efficiency and for promotion even to the rank of minister on merit alone.—The annual report of the **postmaster-general**, issued in December, showed a profit of $74,000,000 on letter postage, a loss of $63,000,000 in carrying newspapers and magazines and a further loss of $28,000,000 in rural delivery. The deficit of $17,000,000 was the largest in the history of the department. The most decisive recommendation was a considerable increase of rates on newspapers and magazines.—The annual report of the **secretary of Commerce and Labor** urged the development and expansion of the Bureau of Corporations, which was to receive and publish reports from all interstate commerce corporations. During the fiscal year the immigrant population increased by 500,000; over a quarter of a million immigrants returned home.—According to plans for the reorganization of the **Navy Department**, formulated by Secretary Meyer in November, four departments were to be created, dealing respectively with material, personnel, fleet operations and inspection, and the existing detached bureaus were to

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be grouped about the first two departments.—Among the appointments made by the president were: Horace H. Lurton, of Tennessee, justice of the Supreme Court; William J. Calhoun, minister to China; William J. Mills, governor of New Mexico; J. L. Davenport, commissioner of pensions; Henry S. Graves, chief of the forestry service; C. H. Rudolph and J. S. Johnston, commissioners of the District of Columbia; R. H. Montgomery, W. H. Hunt, J. F. Smith, O. M. Barber and M. Devries, judges of the new court of customs appeals.

THE DEPENDENCIES.—On November 6 Colonel George R. Colton was inaugurated as governor of **Porto Rico.** The annual report of the Bureau of Insular Affairs, issued in December, showed for the fiscal year a continuous growth in Porto-Rican commerce, the exports having exceeded $30,000,000 and the imports $26,000,000. Of the imports, $23,000,000 came from the United States. The report urged the extension of American citizenship to the Porto-Ricans, either to the whole population directly or to individuals after the performance of preliminary acts. Following a visit of the secretary of War to the island, a bill was introduced in the House of Representatives in February embodying his recommendations and intended as an organic measure to replace the Foraker Act. It provided, among other things, for the extension of citizenship by naturalization to the owners of taxable property and to literate persons; the limitation of office to citizens; a franchise based on literacy or the ownership of taxable real estate or the payment of taxes; a Senate of thirteen members, eight appointive; and a governor to hold office at the pleasure of the president and without a fixed term. The annual budget, so often obstructed and postponed in previous years (see last RECORD, p. 736), was passed on January 29. In November the coffee growers began agitation for tariff favors on imports to the United States.—In November Pearl Harbor, **Hawaii,** was selected, on the recommendation of the joint army and navy board, as the chief Pacific naval base of the United States, thus settling a controversy which went back to Mr. Cleveland's first administration. In February a measure for remodeling the civil government was introduced in the United States Senate by Senator Depew.—In November, W. Cameron Forbes was inaugurated as governor-general of the **Philippines.** In January the supreme court of the Philippines decided that the local government had power to regulate foreign commerce with the islands. The imports for the fiscal year ending on June 30, 1909, were $27,000,000, of which American goods constituted only seventeen per cent. The Payne tariff, removing duties on domestic merchandise passing between the United States and the islands, effected a great change: for the eight months ending February 28, 1910, the imports from the United States were over $10,000,000 and the exports to the United States almost $11,500,000, the total trade between the two countries, in domestic merchandise, showing an increase of fifty-five per cent over the corresponding months of the previous year. According to the Bureau of Insular Affairs the prices paid to tobacco

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growers have increased ten per cent, and to the sugar producer twenty-five per cent. Except for trouble with a Moro outlaw, Jikiri, the insular constabulary has been able to maintain order throughout the Philippines without the active intervention of the army. According to the report of the Japanese Foreign Office, in December, there were only 732 Japanese laborers in the Philippines. It was stated to be the policy of the Japanese government to discourage emigration.

CONGRESS.—The sixty-first Congress met in regular session on December 6.—President Taft submitted his first **regular message** on December 7. He noted that, through rigorous economies in the departments, the estimates for the next fiscal year were $55,000,000 less than the appropriations and $94,000,000 less than the estimates for the current year, and that reforms in the civil service would provide for the dropping of needless employees and the pensioning of the aged. He deprecated any tariff agitation in advance of the carefully collated information which the new tariff board would provide. Among the measures recommended to Congress were: reforms lessening the delay and the expense of litigation; limitation of the power of the courts to grant injunctions; establishment of postal savings banks; increase of postal rates on magazines and newspapers, especially the former; ship subsidies; statehood for Arizona and New Mexico; changes in the government of Alaska; suppression of the "white-slave trade"; and establishment of a bureau of health. In a **special message** of January 7 the president proposed the erection of a court of commerce to have jurisdiction over appeals from the Interstate Commerce Commission; a modification of the Anti-Trust Act, permitting federal incorporation for concerns engaged in foreign or interstate commerce; and a railroad act, increasing the powers of the commission with respect to the investigation of changes in rates and dealing with the questions of pooling, stock-watering and control of competing lines. Other special messages were transmitted to Congress on January 14, regarding conservation of natural resources; on February 26, dealing with improvement in the personnel of the navy; and on March 15, suggesting that the government take charge of seal islands in the Behring sea.—**Numerous bills** embodying the president's recommendations were introduced into Congress. An Interstate Commerce bill, establishing a court of commerce, increasing the powers of the commission and regulating the railroads, was favorably reported from committee and at the end of April seemed likely to pass the Senate without any very notable amendments; but in the House the Democrats, supported by "insurgent" Republicans, were able to make changes of a fairly radical kind. A Federal Incorporation bill, drafted under the supervision of the president, provided for voluntary incorporation of concerns engaged in interstate and foreign commerce, restricted stock issues, required annual reports on specified matters and permitted under restrictions the holding of the control of kindred state corporations. Nine Conservation bills, prepared under the direction of Secretary Ballinger, were introduced on January 18. They had to do with the sur-

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vey and classification of public lands, temporary withdrawals, the development and control of minerals and water power, reclamation and other matters. Mineral deposits were to be separated from the surface of the land and disposed of by lease and not by sale. These measures made good progress in the Senate: it passed the Reclamation bill, providing for the borrowing of $30,000,000; but it rejected the administration bill which made temporary withdrawals permanent only by act of Congress, and it substituted a measure making withdrawal permanent unless the president or Congress should direct otherwise. The Postal Savings Bank bill, introduced in January, passed the Senate on March 5, after being amended so as to allow the withdrawal of deposits from local banks in times of emergency affecting the national credit and the investment of the money in securities yielding at least two-and-one-fourth-per-cent interest. In the House committee this bill encountered determined opposition, and at the close of this RECORD it had not been reported. The Statehood bill passed the House on January 17; but an entirely different measure was placed upon the calendar of the Senate. An Injunction bill, providing that no injunction should issue without previous notice and opportunity to be heard, except when immediate and irreparable injury would result, was introduced into the House in February. A Business Methods bill, providing for the appointment of a board of five members of each House, passed the Senate in February. In the same month the Senate took into consideration a bill modifying criminal procedure with particular reference to the trial of indicted corporations. Ship-subsidy bills were introduced into both Houses. On April 5 a select committee of the House began to investigate an alleged lobby in the interests of the subsidy.—Several attacks were made upon the power of Speaker Cannon by the combined forces of Democrats and insurgent Republicans. In January, by a vote of 149 to 146, the naming of the House members of the joint committee for the investigation of the Pinchot-Ballinger controversy (*infra*, p. 370) was assumed by the House itself. On March 16 the speaker, ruling that a resolution to amend the Census law, though not on the calendar, was privileged under the Constitution, was overruled by a vote of 163 to 111, the majority including 42 insurgents. Next day the victors supported the same resolution and won. Thereupon, Judge Norris, an insurgent from Nebraska, offered a resolution enlarging the committee on rules, providing for its election by the House, and declaring the speaker ineligible for membership. Mr. Dalzell, of Pennsylvania, contended that since the Constitution used the word "may" in this case the resolution was not privileged. When, after delaying till the 19th, the Speaker sustained Mr. Dalzell, he was defeated by a vote of 181 to 164, the majority including 35 insurgents. By a vote of 182 to 160 the House decided to proceed with the resolution, which was adopted in a slightly modified form. A motion to declare the speakership vacant, being supported by only eight insurgents, was rejected by 191 to 155. The Republicans elected to the new committee were: Dalzell (chairman), Smith

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of Iowa, Lawrence, Fassett, Smith of California and Boutell. The Democrats were: Clark of Missouri, Underwood, Dixon and Fitzgerald.—In February Justice Wright of the supreme court of the District of Columbia directed the members of the Congressional joint **committee on printing** to show cause why a *mandamus* should not issue compelling the committee to award a certain contract. The House directed its members to obey the summons; the Senate directed its members to ignore it. On February 28 the justice decided that he had not exceeded his authority, because, in the matter under consideration, the functions of the committee were ministerial and not legislative and its members were therefore as liable to *mandamus* as executive officers would be in a similar case.—In February both Houses entered upon inquiries into the **cost of living**. Before the Senate committee it was repeatedly asserted that the producers and not the packers were reaping most of the profit from the increased price of meat. One cause of the high price of meat was said to be the federal inspection laws, the value of the condemned cattle being added to the price of good meat.—The **Pinchot-Ballinger controversy** (see last RECORD, p. 735), was, in January, made the subject of investigation by a joint committee of twelve members, drawn equally from both Houses. The first witness heard was Mr. Glavis, who asserted that Mr. Ballinger, as land commissioner, had acquired certain knowledge about the Cunningham claims which made it improper for him to appear as counsel for the claimants and that he had also acted improperly in ordering certain claims to patent hurriedly and without giving opportunity for investigation or in other ways following up accusations. Another charge connected Mr. Ballinger, as attorney for claimants, with a transaction involving fraud. The testimony of Mr. Pinchot, the dismissed head of the forestry service, asserted that Secretary Ballinger had entered office determined to reverse the policy of the last administration as to protecting water-power sites against monopolistic control; that he had given the president a false explanation of his conduct; that he had, as regards the Cunningham coal cases, laid before the president a statement which was false in several essential particulars; and that the attitude of the government towards conservation made monopoly easy and often inevitable. With regard to Mr. Ballinger's statement that the restoration of lands to public entry had been made on the recommendation of the Reclamation Service, its chief engineer, A. P. Davis, declared that the recommendation had been forced upon the Reclamation Service by Mr. Ballinger himself. At the close of March the committee heard witnesses introduced on Mr. Ballinger's behalf. Mr. Pierce, assistant secretary of the Interior, testified that his chief, after taking office, had kept clear of the Cunningham claims. A Mr. Todd, on cross-examination, admitted, contrary to the statement in Mr. Wickersham's letter to the president, that Glavis had taken steps to bring criminal proceedings in the Cunningham case. Mr. Ballinger himself appeared before the committee at the end of April and denied the charges brought against him. On April 30 the attorney for Mr. Glavis

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asked for certain papers from the attorney general's office, alleging that the latter's report to the president on the Glavis charges, though bearing date of September 11, was in reality prepared more than two months earlier. The committee, by a vote of 7 to 5, refused to grant the request.

FEDERAL JUDICIARY.—In the case of the United States against the proprietors of the New York *World* for alleged libelous charges with respect to the Panama canal purchase (see last RECORD, p. 739), Judge Hough of the United States circuit court at New York dismissed the suit on January 26, holding that the indictment should have been sought in a state rather than in a federal court.—Among the more important decisions of the Supreme Court were the following. A statute requiring a foreign corporation to pay a charter fee for the privilege of doing local business is unconstitutional, in so far as it concerns corporations engaged in interstate commerce, since it is a tax on such commerce; and if the tax be levied on the entire capital, both within and outside the state, its imposition is contrary to due process of law (Western Union Telegraph Company *v.* Kansas; Pullman Company *v.* Kansas). A state statute requiring a carrier to settle claims for loss or damage to goods within a specified time, while the goods are in the carrier's possession and within the state, is not an unwarrantable interference with interstate commerce (Atlantic Coast Line Railroad Company *v.* Mazursky). An action to enjoin the prosecuting attorneys of a state from bringing proceedings to enforce a statute is not a suit against a state within the meaning of the eleventh amendment (Western Union Telegraph Company *v.* Andrews). To require alteration to be made in a bridge so as to prevent its being an obstruction to navigation is not a taking of property for public use which must be preceded by compensation (Monongahela Bridge Company *v.* the United States). The imposition of additional conditions on the transfer of stock is not an impairment of the obligation of the contract under which the stockholders obtained their stock (Henley *v.* Meyers). A legislative contract of exemption from taxation in favor of a railroad company does not pass to another corporation acquiring the franchise of the former (Chicago Great Western Railway Company *v.* Minnesota). An order of a state railroad commission requiring a train to be run from a point within the state to the state line is not an interference with interstate commerce (Missouri Pacific Railroad *v.* Kansas). A city ordinance prohibiting burial of the dead within the city limits, on the ground of danger to life and health, is not an unconstitutional exercise of the police power of the state (Laurel Hill Cemetery Company *v.* San Francisco).—Judge Horace L. Lurton, of Tennessee, was appointed to the Supreme Court, in December, to fill the vacancy caused by the death of Justice Peckham. Justice David J. Brewer of the Supreme Court died on March 28.—On April 25 Governor Hughes, of New York, was appointed to the Supreme Court, his duties to begin on October 10.

STATE AFFAIRS.—The **sixteenth amendment** empowering Congress to levy an income tax (see last RECORD, pp. 737 and 740) was adopted by

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South Carolina, Oklahoma, Illinois and Mississippi in March. In January Governor Hughes, of New York, sent a special message to the legislature recommending its rejection, as giving Congress power to tax incomes derived from state and municipal bonds. On April 20 the Assembly voted in favor of the amendment, but the required absolute majority was wanting. Governor Harmon of Ohio and Governor Fort of New Jersey have both recommended its adoption.—The **governors** of thirty states assembled at Washington in January and discussed the desirability of uniformity of legislation.—A prohibition amendment to the constitution of **Alabama**, proposed by a legislature elected on a local-option platform, was defeated by a large majority in November.—The **Illinois** legislature adopted a new direct primary law in February, substantially on the lines of a former law declared unconstitutional (see last RECORD, p. 740).—In **Indiana** the Republican state convention, meeting in April, gave no endorsement to the Payne tariff, but demanded a tariff commission to revise the duties on the basis of the difference between the cost of production in the United States and in foreign countries.—The bank-guaranty law of **Kansas** was declared invalid by Judge Pollock of the United States district court on December 24.—A state-wide local-option bill was rejected by the **Maryland** legislature in March. On the plea that the state was not bound to recognize the fifteenth amendment, which the state individually did not adopt, the legislature, in March, passed a bill disfranchising negroes in all state and municipal elections. Governor Crothers withheld his consent. The legislature also passed a direct primary law which, while retaining the party convention, provided that the delegates should vote according to instructions from the voters as to the choice of candidates.—In **Michigan** local option made gains on April 4, nineteen counties voting "dry" and sixteen "wet." From the ten already dry there were only two defections.—In February, after seven weeks' deadlock, the **Mississippi** legislature chose Leroy Percy, a Democrat, to fill the unexpired term of the late Senator McLaurin. Charges of bribery in securing votes were brought by State Senator Bilbo and made the subject of legislative inquiry. In April Senator Percy challenged his opponent in the election, ex-Governor Vardaman, to let the people decide between them in a primary vote.—In March the **New Jersey** legislature empowered a public utilities commission to supervise all the public utilities of the state, to require corporations to keep books according to a uniform system, and to stop rebates and unjust, unfair and unreasonable discriminations. Under the law no sale or delivery of stock is legal until approved by the commission.—A special committee of the **New York** legislature, after an extensive investigation of the direct primary system, reported on February 21 a bill in which party conventions were retained for the nomination of all candidates except for town, village and ward offices. The New York Senate undertook investigation of the bribery charges brought against its newly chosen president, J. P. Allds, by Senator Conger,

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and on March 29 decided that, in 1901, he had accepted $1000 as the price of killing legislation objectionable to certain bridge companies. The choice of Senator Cobb as his successor was a victory for the machine against the efforts of Governor Hughes and Senator Root. In April Superintendent of Insurance Hotchkiss brought further corruption to light in his inquiry into the legislative expenditures of insurance companies. Urged by a special message from the governor, the legislature decided in April that a full investigation be made of corrupt practices in the legislature and the state departments.—In March the **Ohio** Senate rejected by a vote of 18 to 16 the Dean bill, which amended the county local-option law by giving municipalities the right to vote alone on the question of liquor selling. In the same month the investigation of graft scandals resulted in numerous indictments and the conviction of former State Printer Slater. Over $500,000 taken illegally by Republican officials was restored to the state. Many of the charges had to do with the passage of the Elson telephone bill through the Assembly.—On January 1 the law prohibiting the manufacture of liquor in **Tennessee** went into effect.—Prohibition made gains in **Vermont** in the elections of March 1.—Legislative investigation of the direct primary system in **Wisconsin** led to its modification.

MUNICIPAL AFFAIRS.—On January 11 **Boston's** first election under the new form of government (see last RECORD, p. 743) resulted in the choice of ex-Mayor J. F. Fitzgerald. The vote was the heaviest ever cast in a similar election in the city.—In November **Buffalo** voted affirmatively on the question whether the legislature of New York should be asked to enact a new charter for the city after the plan of Des Moines.—In the election of April 5 the Democrats obtained a majority in the city council of **Chicago.** Eleven persons, city officials and contractors, were indicted by the grand jury in January for conspiracy to defraud the city of $254,000.—In February **Cleveland** adopted by referendum a new street-railway franchise, under which a maximum fare of four cents is provided. Three cents is to be charged if the company can make a profit of six per cent on that basis.—**Hartford** elected a Democratic mayor, E. L. Smith, on April 5.—**Kansas City,** Kansas, one of the largest cities to adopt the commission form of government, had its first election under the new system on April 5. A Democrat, J. E. Porter, was elected mayor; two of the four commissioners belonged to each party.—In **Kansas City,** Missouri, on April 5, the voters ratified their previous rejection of a proposal to grant the street railway a forty-two-year franchise: only one alderman who voted for the measure was returned; none who voted against it was beaten.—**Milwaukee** elected a Socialist mayor, Emil Seidel, on April 5, and gave the Socialists 21 of the 35 seats in the council. Outlining his policy, the mayor laid particular stress on securing self-government for the city as a preliminary to municipal reforms and the improvement of factory conditions. His program included work for the unemployed, city ownership of the street-railway and light plant and three-cent fares on the street cars.—Tammany control of

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the **New York** board of aldermen was not ended by the successful fusion campaign of November: the Tammany majority is 42 to 37. In April graft exposures in the borough of Queens led to the dismissal of Joseph Nelson, chief of the sewer department.—The Republicans won a sweeping victory in the **Philadelphia** municipal election on February 16: not a reformer reached the city councils or the board of magistrates.—The bribery investigation in **Pittsburg** (see last RECORD, p. 743) made great advance in March through the confession of ex-Councilman John Klein, implicating a large number of business men and present and former members of the city council. Taking advantage of the district attorney's offer of clemency, many made confessions before the court. The grand jury returned forty-one indictments on March 21, sixteen on March 30, eight on April 1. On April 6, F. N. Hoffstot, president of the German National Bank of Allegheny and of the Pressed Car Company, was indicted on charges of bribery and conspiracy. Another bank president confessed to the expenditure of $20,000 bribe money in councils.—In November **Tacoma** adopted commission government.—Under the Kansas law permitting the cities to take such action **Topeka**, by a vote of 2662 to 2146, adopted the commission form of government in November.—On December 14 **Worcester** voted to restore the saloon. James Logan, a Prohibitionist, was elected mayor.

THE TRUST PROBLEM AND THE RAILROADS.—On November 20 Judges Sanborn, Vanderventer, Hook and Adams of the United States circuit court for the eastern district of Missouri handed down a unanimous opinion that the **Standard Oil Company** of New Jersey was an illegal corporation in restraint of interstate trade and commerce, and ordered it dissolved. The court forbade the company to vote on the stocks of the subsidiary companies and forbade these to pay dividends on the stock of the holding company. The defendants were to refrain from entering on any similar combination by any methods whatever. Appeal was argued before the Supreme Court in March, the appellant's lawyers maintaining that the company was not a union of previously competing concerns but a natural development of the business organized in 1862, the government lawyers maintaining that it was not only a combination in restraint of trade but that it had sought to establish monopoly by unfair methods of competition and oppression. On April 11 the court announced that the case must be reargued.—On December 30 the attorney-general asked the Supreme Court of the United States to appoint a receiver for the **American Tobacco Company**, alleging conspiracy in restraint of trade. This case also was held over for reargument.—As the result of inquiry into the affairs of the alleged **milk trust** in New York, eight directors of the Consolidated Milk Exchange were indicted on February 23 for conspiracy to fix the wholesale price of milk.—Popular belief in the existence of a **meat trust** and in its responsibility for the prevailing high prices resulted in a boycott which began in Cleveland and spread rapidly through the middle West. In January it was said to have over a million adherents. An inquiry into the meat-

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packing industry of Chicago, undertaken by the federal Department of Justice, resulted, on March 21, in indictments against the National Packing Company and ten subsidiary companies. Three days later a grand jury in New York indicted eighty-seven poultry dealers for offenses connected with the restraint of trade. In New Jersey, following upon the disclosure of unsatisfactory conditions in cold-storage plants, several packers were indicted. —A case under the **Elkins law** was decided at Cincinnati on February 28, when Judge Sater of the United States district court fined the Lake Shore and Michigan Southern Railroad $1000 for billing railroad ties through to Chicago and then back to Bryan, Ohio, to avoid heavy local rates.—In April D. O. Ives appeared before Judge Holt of the United States circuit court at New York and pleaded guilty to one count of an indictment charging him with **rebating** as traffic manager of the Wabash Railroad. He was fined $1000.—Hearings in the government's suit for the dissolution of the **Union Pacific merger** (see RECORD, June, 1909, p. 360) were resumed in New York in February. Testimony for the defence closed on March 31. —Suit for $375,000 was filed in the United States district court at Cincinnati, in February, against the **watch-case trust**, a group of concerns alleged to be unlawfully combined within the meaning of the Sherman Act. The defendants were charged with issuing a circular forbidding retailers supplied by them to sell watches made by other firms.—The federal grand jury at Philadelphia indicted the **Bethlehem Steel Company** on March 29, charging it with soliciting and accepting from certain railroads the cancellation of demurrage charges. The railroad companies were also indicted. —On April 7 a special federal grand jury indicted the **Imperial Window Glass Company** of West Virginia and sixteen of its officers for conspiracy in restraint of trade, illegal competition and attempt to monopolize interstate trade.—The application brought against the **American Ice Company** by the attorney-general of New York, for the cancellation of its permit to do business in the state, on the ground that it had violated the provisions of the state corporation law, was upheld by the appellate division of the supreme court on December 18.

LABOR AND CAPITAL.—In February a decision was given in the famous **Danbury hatter's case** which has been long pending. A jury in the United States circuit court assessed a collective fine of $74,000 against some two hundred trade-union members who tried by boycott to destroy the business of a manufacturing hatter at Hartford. By the terms of the Sherman Act the actual assessed damages were trebled.—In the middle of November the convention of the American Federation of Labor reëlected Samuel Gompers president, John Mitchell vice-president and Frank Morrison secretary, and resolved that an appeal should be taken to the Supreme Court of the United States on both the injunction and the contempt proceedings in the **Bucks Stove and Range case** (see last RECORD, p. 746). On December 6 the court granted the application for review by writ of *certiorari* of the sentence imposed by the District of Columbia court.

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—A great **street railway strike** began in Philadelphia on February 19. The members of the Amalgamated Association alleged against the traction company intrigues to undermine and destroy the union, unjustifiable dismissal of 176 union men and various breaches of agreement (see last RECORD, p. 746), especially with regard to wages and the proper recognition of the accredited representatives of the union. Attempts to run the cars in the early days of the strike led to violence and bloodshed, which was checked for a time by the presence of the entire force of the state police, but which continued during the early part of March. Clarence Pratt, national organizer, and J. J. Murphy, president of the Central Federation of Labor of Philadelphia, were arrested on the charge of inciting to riot. For the support of the carmen the leaders of the Central Federation called on February 27 a sympathetic strike, which failed entirely in its object of paralyzing the city's industries. On April 17, in spite of an adverse (though close) vote of the motormen and conductors, the executive committee of the Amalgamated Association came to terms with the traction company. These terms were: the reinstatement of the strikers, arbitration in the case of the dismissed men, a slight increase in wages and recognition of the right to form separate unions and to present grievances separately.—Towards the end of the year **shirtwaist-makers** in New York and Philadelphia struck to obtain higher wages and shorter hours. In both cases the strikers won important concessions, especially in the reduction of hours.—Seventy railroads east of Chicago were affected by the demands made by **firemen, trainmen and conductors**, in the first three months of the year, for an increase of from ten to thirty per cent in wages and for concessions affecting the conditions of labor. On March 26 the Lehigh Valley Railroad arranged a one-year agreement with its firemen, conceding a ten-hour day. In the same month an agreement was reached between the Baltimore and Ohio Railroad and its employees without resort to a strike. Immediate concession of the same terms was demanded, on April 12, by the 5500 trainmen and firemen of the New York Central Railroad, but the matter was settled by arbitration. On April 17 a strike of 3500 men, demanding precisely the same concessions from the Lackawanna Railroad, was averted by an agreement to accept the decision of the New York Central arbitrators. The New York, New Haven and Hartford Railroad had to adjust similar claims on the part of 3800 men.—In March 25,000 firemen employed on the railroads west of the Mississippi demanded an increase of wages. The situation became so acute that Chairman Knox of the Interstate Commerce Commission and Commissioner of Labor Neill went to Chicago as intermediaries.—On November 30 over 2000 **switchmen** employed in railroad yards between St. Paul and the Pacific refused arbitration and struck to enforce demands for an increase of six cents an hour and double pay for overtime. They returned to work after two weeks without having secured any concessions.—The employees of the Trenton **street railway** struck on March 7 to secure an increase of wages, shorter hours, recognition of the

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union and reinstatement of dismissed union men. Two days later, after serious rioting, the demands of the strikers were conceded, except with regard to recognition.—By dismissing the appeal of the **United Mine Workers** of America, on March 12, the United States circuit court of appeals at Richmond perpetuated an injunction restraining the union from interfering with employees of the Hitchman Coal and Coke Company for the purpose of unionizing the mine.—The strike at the mills of the Pressed Steel Car Company at **McKee's Rocks**, Pennsylvania (see last RECORD, p. 745), continued in spite of the settlement in September.—A strike of 1600 **machinists** employed in the plant of the Bethlehem Steel Company was declared at the end of January. The state police had to be summoned to suppress violence. The men gradually returned to work.—In April the **steel trust** announced a general increase in wages and a system of pensions and disability payments for those injured and for the families of those killed.—On March 31 three hundred thousand **coal miners** suspended work and demanded higher wages. Concessions were made by many of the operators.—Employees in several of the **International Paper Company's** mills in Maine and New York went out in March, demanding increase of wages and no discrimination against the union.—On April 30 some 6000 **bakers** went on strike in New York over the question of the open shop.—In January federal investigation revealed the fact that over 2000 men and women, white and negro, were being held in **peonage** on Texas cotton plantations.

THE RACE PROBLEM AND LYNCHING.—The Brownsville case (see RECORD of June, 1909, p. 363) was closed in April with the report of the military board of inquiry. Blame was laid upon the officers of the Twenty-fifth regiment, who, in the judgment of the board, could have prevented the shooting or could have ascertained, by prompt action after it had taken place, the identity of some of the guilty persons. Fourteen men were declared eligible for reënlistment.—At Cairo, Illinois, on November 11, a mob numbering some ten thousand lynched a negro, Will James, accused of assault upon a woman culminating in murder. He was found in the woods where the sheriff had hidden him and was brought to Cairo by train. Women took a prominent part in the affair. The mayor and several clergymen attributed the lynching to the failure of the courts to punish murderers. In February a mob attacked the jail to seize a negro charged with purse-snatching, and one man was killed. The militia had to be called out to preserve order. In two other Illinois towns, in Belleville in December and in Vienna in January, prompt use of the militia averted lynchings.—At Dallas, Texas, on March 3, a mob forced entrance to the courtroom where a negro, Allen Brooks, was being tried for attacking a girl of three and threw him out of the window, breaking his neck. The militia were ordered out to protect other prisoners. Another Texas lynching occurred at Rosebud on December 20.—Two negroes were lynched at Marion, Arkansas, on March 18. After an inquest a verdict of suicide was returned.—A remarkable ovation greeted ex-Sheriff Shipp of

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Chattanooga, when he returned in January after serving sentence for contempt of the Supreme Court of the United States in connection with a lynching (see last RECORD, p. 746). In February two negroes were killed in a race riot near Chattanooga. At Memphis, on March 15, a negro shot two white men who crowded on a street car ahead of him.—A lynching occurred at Anniston, Alabama, on November 24, as the result of an attack on a white woman. At Magnolia, where the negroes outnumber the whites fifty to one, a serious conflict occurred over the murder of a white man in December. One white man was killed and several injured in an attempt to capture the murderer.—Three deputy sheriffs of Tampa lost their lives in an effort to capture two negroes, who were finally found and shot in a swamp.—Within six hours a negro was indicted, tried and sentenced for assault upon a six-year-old girl at Staunton, Virginia, in November.—On April 25 the supreme court of Louisiana decided that the word "negro" in statutes providing for separation of the races could not be applied to octoroons or other persons of mixed blood.

III. LATIN AMERICA

On April 1, the twenty-fourth Congress of **Mexico** began its fourth session. President Diaz reported the condition of the country to be generally excellent. On the next day a grand demonstration took place in the capital in favor of the reëlection of Diaz and Corral, it being the forty-third anniversary of the surrender of Puebla by Maximilian's troops to General Diaz.—Two **Cuban** editors were sentenced on February 5 to imprisonment for libeling President Gomez. Señor Morua, the first negro to hold a cabinet position in the republic, was installed on April 16. The Conservatives developed formidable opposition in Congress to the budget, especially to the items granting the president a secret fund and expense accounts for members of the cabinet. A wide-spread negro conspiracy against the government was discovered in April.—General Estrada, the commander of the **Nicaraguan** revolutionaries, gained repeated successes against the government, until, in January, he threatened Managua, the capital city. Meanwhile, President Zelaya resigned on December 16 and took refuge in Mexico, and the Congress elected Dr. José Madriz as his successor. The latter offered to submit the question of the presidency to a popular election, but General Estrada declined. Early in March, the fortune of war turned from the revolutionaries to the government forces, and several crushing defeats confined General Estrada's efforts to the coast region.—In **Panama** Dr. Carlos A. Mendoza, first vice-president, succeeded the late President Obaldia in March.—An insurrectionary outbreak against President Davila of **Honduras** was reported in April.—Elections were held in **Colombia** on April 3 for a constitutional assembly, to meet at Bogota on May 15. The campaign was begun for the selection one month later of a new president to succeed Dr. Gonzales-Valencia.—The **Brazilian** general election, held on March 1, resulted in the choice by a large majority of the Con-

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servative leader and former minister of War, Marshal Hermes Fonseca, as president.— In **Uruguay**, the "white" Liberals, under the leadership of Señor Manuel R. Alfonso, announced in March their determination to oust the "red" Liberals, who had been in control for fifty years. They charged the government with unconstitutional centralization of power, with crippling the pastoral interests of the country and with preventing free elections. Bands of guerrillas, some from Argentina and Brazil, were giving the government no little trouble.—In **Argentina**, the presidential election took place on March 13. Dr. Rogue Saenz Peña was elected.—There were changes of ministry in **Chile** on December 20 and in **Peru** on March 5.

IV. THE BRITISH EMPIRE

THE UNITED KINGDOM.—The long-debated "revolutionary" **budget** (see last RECORD, p. 749) passed the Commons on November 4, with slight amendment, by 379 to 149, the Nationalists abstaining. Debate followed in the House of Lords. Lord Lansdowne, leader of the Conservative peers, declared that the House "was not justified in giving its consent to this bill until it had been submitted to the judgment of the people." Lord Roseberry, Lord Morley and the archbishop of York, though opposed to the principle of the budget, made able speeches against the attitude of Lord Lansdowne, on the ground of expediency. The speech of Lord Curzon in favor of the Conservative position was particularly brilliant. On the night of November 30, all but four of the 615 members being present, the House of Lords, by an overwhelming majority, passed Lord Lansdowne's amendment to submit the finance bill "to the judgment of the country." On December 2, Mr. Asquith in the House of Commons moved the resolution that "the action of the House of Lords in refusing to pass into law the financial provisions made by the House for the service of the year was a breach of the constitution and a usurpation of the rights of the Commons." Mr. Balfour, speaking for the opposition, endorsed as the exercise of a proper function the action of the Lords in referring so grave a matter to the people. Mr. Henderson assured the premier of the support of the Labor party, declaring that "the second chamber as constituted at present was absurd and logically indefensible." At the final division, Mr. Asquith's resolution was carried by a vote of 349 to 134, the Nationalists again abstaining. Parliament was prorogued the following day, and the expected dissolution was decreed on January 8.—Meanwhile, the very morning after the peers' action, the **campaign** had been inaugurated by a sweeping manifesto from the National Liberal Federation, declaring that the Commons must have the final word in all legislation, including of course finance, and making a rally-cry of the peers' "usurpation." The Laborites on December 1 issued their manifesto, saying: "The Lords must go." The latter statement was endorsed by the Trade Union Congress on December 6. The Unionist leaders, Mr. Balfour, Lords Lansdowne, Curzon, Roseberry and others, succeeded in the course of the campaign in bringing

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before the country several issues other than the position of the House of Lords. They attacked the budget, asserting that (1) it would tax a small fraction of the population through the super-tax on incomes; (2) the death duties would operate to drive capital from the country; (3) the tobacco and spirit tax would inconvenience the poor and injure Ireland; (4) the tax on motor oil would advance the interests of the Standard Oil Company; and (5) the emphasis upon land tax would be a discrimination against one kind of property. The Unionists also pointed out the dangers to England and the Empire of making any concessions to Irish home rule. As a substitute for the financial policy of the budget, they proposed tariff reforms along protectionist lines. The chief issues involved in the campaign were thus (1) the position of the House of Lords; (2) the budget; (3) free-trade or protection; (4) home rule for Ireland. Besides these, several minor issues were injected, such as naval defense, urged most strongly by the Conservatives, the Education Bill, attacked by the Nonconformists, and the disestablishment of the Welsh Church, championed by Mr. Lloyd-George and other Welsh Nonconformists.—The **elections**, which extended from January 15 to February 9, returned 275 Liberals, 273 Unionists, 40 Laborites, 71 Redmond Nationalists and 11 Independent (O'Brien) Nationalists. This meant a government majority, dependent upon Laborite and Nationalist allies, of 124, as compared with a majority before dissolution of 334. In order to repass the budget, Mr. Asquith thus needed the support of the Nationalists, who were inclined to oppose it. Mr. Redmond declared that the abolition of the veto of the Lords was necessary for the establishment of Irish home rule; that for the government to pass the budget and postpone the veto question was a policy that Ireland would not approve; that his party, with the balance of power, would fight the budget unless it were a question of securing home rule, in which case they would accept it.—In the midst of this uncertainty as to whether the budget or the veto would be taken up first, the new **Parliament**, the twenty-ninth of the United Kingdom and the third of Edward VII, was opened on February 21. It was rumored that, on the matter of tactics, dissension prevailed in the government between Mr. Lloyd-George and those representing Radical policies and Labor interests on the one hand and Mr. Asquith and the more moderate Liberals on the other. The premier at length announced that the government would first take up the veto question and then consider the budget. Mr. Austen Chamberlain's Unionist motion in favor of tariff reform was defeated, after a brilliant debate, by the close margin of 31 votes, the Nationalists abstaining. On March 29, Mr. Asquith introduced his resolutions dealing with the veto: (1) that the House of Lords be disabled from rejecting or amending a money bill; (2) that the powers of the Lords, as respects other bills, be restricted so that any such bill which has passed the House of Commons in three successive sessions and, having been sent up to the House of Lords at least one month before the end of the session, has been rejected by that House in each of those sessions, shall become a

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law without the consent of the House of Lords, on the royal assent being declared, provided that at least two years shall have elapsed between the date of the first introduction of the bill in the House of Commons and the date on which it passes the House of Commons for the third time; (3) that the duration of Parliament be limited to five years. The debate on these resolutions was conducted with considerable bitterness on both sides; they were finally adopted on April 14 by 351 votes to 246.—Meanwhile, a counter movement was begun for the reform of the **House of Lords** from within. Lord Roseberry on March 9 moved the following resolutions: (1) that a strong and efficient second chamber is necessary to the well-being of the state; (2) that such a second chamber can be obtained by reforming and reconstituting the House of Lords; (3) that a necessary preliminary to such reform is the acceptance of the principle that possession of a peerage shall of itself no longer give the right to sit and vote in the House of Lords. These resolutions were passed, the last on April 7 by 175 votes to 17.—The **budget**, reintroduced in the House of Commons by Mr. Lloyd-George on April 19, was passed by that House by a majority of 93 and on April 28 by the House of Lords. The king gave his assent the following day and Parliament adjourned until May 26.—So overshadowing was the importance of the budget and the elections that other matters received a minimum of attention from the press. The "**suffragettes**" played a prominent part in the campaign in support of the opposition, but the methods employed by them were less militant than formerly.—The **navy** estimates for 1910 provided for an expenditure of $203,018,500, an increase of nearly twenty-eight millions over 1909. The naval program included five large armored ships, five protected cruisers and twenty destroyers. The army estimates for 1910–11 showed a total for maintenance of $138,800,000, an increase over the estimates of the preceding year of $1,625,000. The total expenditure during the same period for old-age pensions was estimated at $46,100,000.

CANADA.—Sir Wilfred Laurier introduced the **Naval Defense** bill in the House of Commons on January 12. It provided for the establishment of a naval college and for the construction of a fleet under Canadian control, which in case of emergency, however, might be placed at the disposal of the king for service in the royal navy. It called for the early building of five cruisers and six destroyers at a cost of $11,690,000. For two months, the measure was unsuccessfully fought by the Conservative opposition, first by an amendment substituting a contribution to Great Britain of two Dreadnoughts, then by a proposed plebiscite on the question of the building of a Canadian navy and, finally, by a motion to kill the bill. It finally passed the House on March 10 by a solid party majority of 41.—A radical **anti-trust measure** was presented on January 18 by Mr. Mackenzie King, minister of Labor, providing for monopoly investigations by a board of three, one appointed by the plaintiff, one by the defendant and a third by joint agreement or by a judge. Such a board would have the full

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powers of a court. Two remedies might be applied wherever the board had proved the existence of a monopoly: the government might either withdraw tariff protection from their products or impose a fine of $1000 a day until the abuse should be remedied. Patents used to restrict trade or raise prices might be revoked.—Ratifications of the trade treaty with France were exchanged at Paris in February. During the same month, a commercial arrangement was effected with Germany.—Henri Bourassa in December outlined his views as leader of the **Young French Canadian** movement. He claimed that if called upon to give money and blood for the flag Canadians should have a voice in diplomacy and foreign policies.

AUSTRALIA.—The **Commonwealth Parliament** passed in November by a vote of 59 to 9 the government's Defense bill, providing for the immediate construction of thirteen ships under the auspices of the British Admiralty. Lord Kitchener, as a result of his visit in February, recommended the maintenance of an army of 80,000 men and the establishment of a military college modeled after the American military academy at West Point. The field force would be taken from trained men between the ages of 19 and 25 years. Trained men between the ages of 18 and 26 could be used in time of war to raise the total to 107,000.—Parliament in November passed by a vote of 39 to 27 the Financial Arrangement bill, providing for an annual *per capita* payment of 25 *s.* by the Commonwealth to the several states in lieu of the three-fourths of the customs revenue which had hitherto been paid.—On November 26, the Senate confirmed the selection of Yass-Camberra as the federal capital and ratified the agreement for the transfer of the territory by New South Wales.—The general **elections**, which took place on April 11, returned 45 Laborites, 27 Fusionists and three Independents. Mr. Alfred Deakin's government, a coalition of Free Traders, Protectionists and Anti-Socialists, resigned on April 19.—Much trouble was caused in **New South Wales** by an extensive coal strike in November. About 16,000 men left work. A Labor motion in Parliament to nationalize the coal mines was defeated by a vote of 39 to 25. On November 30, Mr. Lee, the acting premier, announced his determination to intervene. On the government's application, the Industrial Court appointed a compulsory wages board to end the strike, and bills were passed in December enlarging the government's powers in the matter. A compromise was effected in January. The population of the state on December 31 was 1,645,445, an increase of 40,436 during the year.—The Legislative Assembly of **Victoria** passed a land-tax measure and a bill to regulate the coal mines, prescribing an eight-hour day and prohibiting the employment of boys under fourteen.—**Tasmania** has undergone a political crisis. An anti-Socialist fusion, arranged by Sir Neil Lewis, the former premier, defeated the Labor cabinet of Mr. Earle, who had held office barely a week, and assumed the government with the slender majority of six votes.

NEW ZEALAND.—The **budget**, submitted to Parliament in November, showed an estimated revenue of $45,000,000. The proposed expenditure

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for the navy was $1,250,000.—A **Defense bill** was passed in December, providing that all boys between the ages of twelve and eighteen are to have elementary progressive training in cadet divisions; those between eighteen and twenty-one are to have compulsory training on stated evenings and fourteen days annually in camp; a volunteer force of 20,000 men is to be maintained and rifle clubs are to be encouraged.—A **strike** in the government coal mines agitated the dominion during November and December. The strikers, who were earning two dollars a day with a seven-hour shift, demanded higher pay, but the government remained firm in its refusal to accede to the demand.

SOUTH AFRICA.—The royal proclamation of the "Union of South Africa" was gazetted on December 3. It announced the inauguration of the **new government** for May 31, 1910. The king appointed Herbert John Gladstone as the first governor-general. Consultations at Pretoria between Dr. Jameson, the former premier of Cape Colony, and General Botha, the Boer leader, were generally supposed to indicate a revival of the project for a coalition ministry. Considerable opposition was offered to the project, especially by Mr. Merriman, the prime minister of Cape Colony, and negotiations were finally abandoned. Dr. Jameson denounced the racialism underlying the old party divisions praised by Mr. Merriman. Special sessions of the state legislatures were held in April to elect senators to the Union Parliament. Cape Colony contracted a loan of $135,000, to be expended on the renovation of the public buildings in anticipation of the first meeting of the Union Parliament.—The "Cape to Cairo" railway was completed from Cape Town to the southern Congo frontier on December 11.—The government of **Cape Colony** succeeded in November, after a protracted and bitter debate, in passing the "Light Wine" bill, which was intended to provide a more strict regulation of the liquor business.—The government of the **Transvaal** opposed the plan to exact yearly instead of monthly reports on the financial situation of the Rand mines, on the ground that it would result in an increase of gambling.—General Lord Methuen was appointed to succeed Colonel Sir Matthew Nathan as governor of **Natal.**

INDIA.—**Elections** were held in December for the enlarged viceroy's council. By the new arrangement, the council consists of 370 members instead of the former 126, and 135 are elected as opposed to 39 under the old system; but any candidate for the viceroy's or provincial councils may be disqualified if the government concerned holds that his election would be prejudicial to public interests.—The **Imperial Council** met on January 26. Lord Minto, the viceroy, presided. He declared that representative government in the western sense was not applicable to India; he reviewed the changes and advances, which he said were due to the educational system introduced by the British; and he proposed several reforms: first, a council of princes or their representatives, acting in conjunction with the Imperial Council; second, additional provincial councils; and third, the

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prolongation of the term of the budget. The Imperial Council passed a press bill on February 28, designed to suppress anarchistic literature, and requiring the newspapers and job-printers to deposit a sum of money with the government to be forfeited in case of the conviction of the depositor of any attempt to incite murder, sedition *etc.*— Some **disaffection** among the native troops was noticed in January in connection with the Bengal agitation.—The Hindoos of Bengal in April declared a boycott against all Mohammedan traders who would not join the revolutionary movement. The editor of *Swarajya* was sentenced to ten years' transportation for printing seditious articles.—Rioting in Bastar, a feudatory state in the central provinces, was suppressed in February.

OTHER DEPENDENCIES.—The royal West Indian commission, constituted for the purpose of bringing Canada and the **West Indies** into closer commercial relations, visited Jamaica in February and recommended the grant of substantial subsidies for maintaining a fast and frequent steamship service between Kingston and Halifax.

V. CONTINENTAL EUROPE

FRANCE.—Parliament debated a number of important measures in view of the approaching general elections. The **budget** of M. Cochéry, minister of Finance, providing for additional expenditure for army and navy and for old-age pensions, to be met by an income-tax and by higher taxes on inheritances, automobiles, tobacco and liquors, was discussed by the Deputies during February and March; but final action was postponed until the next session.—The **Old Age Pensions** bill passed the Senate on March 22 by a vote of 280 to 3, with amendments which were accepted by the Deputies on April 1. The new law, which goes into effect on January 1, 1911, prescribes that laborers at the age of sixty-five are to receive a *rente*, calculated upon their obligatory contributions, plus a fixed *viagère* or annuity from the state; laborers at the age of fifty-five may claim the *rente* on a proportionately reduced scale, without the *viagère;* the obligatory contribution of a man is nine francs annually; of a woman, six francs; and of a boy under eighteen, four and one-half francs; every wage-earner who receives a pension must have been employed at least thirty years. The law was expected to cost the government $100,000,000 annually.—On April 1 the Chamber of Deputies authorized Admiral Boué de Lapeyrère, minister of Marine, to begin immediately the construction of two of the seven battleships voted in the naval program of 1910. The Chamber postponed until next session the discussion of the great project of an organic **naval** law submitted by the minister of marine.—An innovation in the **army** was decided upon, despite Socialist opposition, by which native troops would be organized in Algeria and West Africa to replace French troops. A bill was under consideration to weed criminals out of the army.—The **Catholic** agitation against the government was increased by the school question, the trial of several bishops and the Duez scandal. In November MM. Aulard and

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Debidour, authors of a book condemned for Catholic students, began suit for damages against the archbishop of Paris, and other authors took similar action. On December 5, M. Barthou, minister of Justice, instructed the public prosecutor at Grenoble to begin action against a local priest for placing a communal school under an interdict. On January 11, bills were introduced into Parliament to increase the government's powers in the matter, to introduce state control in Catholic and other private schools, and to substitute the state for teachers as defendant in suits brought against them by Catholic parents' associations. Cardinal Luçon, archbishop of Rheims, defended himself in January in a suit brought by the Public School Teachers' Association on the ground that he had merely warned Catholic parents that the religious training of their children might be endangered by the text-books prescribed by the government for the public schools, but he was condemned to pay a fine of $100 and costs. On the other hand, a similar case against the archbishop of Nancy was dismissed. These suits were practically lost sight of, however, in the discovery of enormous defalcations of M. Duez, who was one of the commissioners in charge of liquidating the church property under the Separation Act. It was stated that less than six million dollars had been received by the state from lands estimated to be worth over two hundred millions. The opposition endeavored to make political capital out of the episode, but M. Briand guaranteed a thorough investigation, and the Chamber in March voted confidence in the ministry.—The Paris Improvement bill (see last RECORD, p. 754) passed the Chamber on December 28 by a majority of over 300.—The Senate in February debated **electoral reform**, including a secret ballot and proportional representation.—A plan was arranged in February, whereby delegates from government employees' unions are to consult with the minister of Labor at least once in two months.—A strike on the Western Railway was threatened in March and April.—The Senate on March 1 approved a bill for the codification of workingmen's laws.—The **Socialist Congress**, held at Nîmes in February, voted to leave to the district federations the choice of candidates in the next elections. The session was characterized by a bitter struggle between the followers of M. Jaurès and M. Hervé on the question of approving the government's proposal of old-age pensions. M. Jaurès, who favored such endorsement, carried the day by a vote of 193 to 156. M. Hervé subsequently announced his withdrawal from the party. During the week of February 26, M. Hervé was sentenced to four years' imprisonment for having justified in an editorial in his paper, *La Guerre Sociale*, the action of an *apache* in slaying a policeman.—The general parliamentary **elections** began on April 24. Early reports indicated that the Radical *bloc* was returned with only slight losses. The main issues were the struggle between the government and the clergy over education, the budget of M. Cochéry with its new taxes, the old-age pensions, proportional representation, the secret ballot and naval reform. M. Briand opened the campaign on April 10 at Saint-Chamond, Loire, in

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a speech which was interrupted by anarchist and revolutionary groups, who broke the windows of the hall and fired revolvers. One interesting feature of the campaign was the active participation of women at Paris in the interest of equal suffrage.

GERMANY.—The new **Reichstag** was opened on November 30. The speech from the throne asked that the law providing for the creation of a workmen's, widows' and orphans' insurance from the wheat tax be not operative until April 1, 1911, and that the colonial governments be reformed. Count Stolberg-Wernigerode was elected president. The Conservative-Clerical *bloc* assured the chancellor of their continued support.—On December 16 the three radical **liberal groups** issued a draft of a plan to unite into one party, to be known as the *Deutsche Freisinnige Volkspartei;* this union to be consummated at a general convention in 1912 with a platform comprising gradual reduction of the tariff, restriction of the privileges of large landowners, graduated taxation on property and legacies, electoral reforms and a ministry responsible to the Reichstag. These groups have at present fifty representatives in Parliament.—The **naval** budget showed an increase of seven million dollars. Plans for a new naval base at Brünsbuttel, at the western end of the Kaiser Wilhelm canal, were completed in February and work was at once begun. It was reported that the canal would be considerably enlarged and the new base would rank with Kiel in importance.—The secretary of the imperial Treasury stated before the Reichstag in March that the deficit was $44,500,000. He doubted whether returns from the new taxes levied in 1909 could be accurately estimated before 1912.—A bill to create a trust of all the potash mines in the country under the auspices of the imperial government was laid before the Bundesrath in January by the Prussian government.—An Increment Tax bill, providing for the readjustment of the rival claims of the empire and the local authorities in taxation, was adopted by the Bundesrath in April and presented to the Reichstag. Under it, taxation is to be divided into three parts, 50 per cent for the empire, 40 for the local authorities and 10 for costs of collection.—On January 11, the emperor opened the **Prussian** Diet. Proposed legislation included a bill for electoral reform and a measure to counteract the tendency of the laboring class to desert the farming districts. The budget of Prussia showed a deficit of $23,000,000, due chiefly to an increase in the salaries of government employees. On February 10, Herr Bethmann-Hollweg, the imperial chancellor, as Prussian prime minister introduced the long-heralded Franchise bill, by the terms of which the three-class system itself, whereby the electors are grouped according to the amount of taxes they pay, was retained, but officials and other members of the educated class were to be placed in the first and second classes irrespective of the amount of their taxes. The bill also provided for direct instead of indirect voting. The measure was anything but satisfactory to the reformers, the Radicals and Socialists. From February 13 to March 16, when the bill

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was passed without substantial amendment, serious riots occurred throughout Prussia and, on account of the influence of the Prussian franchise on politics in the Reichstag, elsewhere in the empire. Demonstrations, organized by the Socialists, took place at Berlin, Halle, Frankfurt, Königsberg and Kiel, and there was some bloodshed. The Poles protested in February against the dismissal of petty officers because they voted for Polish candidates. The chancellor replied that all officials must uphold Prussia's Polish policy.—A tax-reform measure was carried in the **Bavarian** Diet in December, against the united opposition of the Social Democrats.—Tax reform was the most important question confronting the **Baden** Diet.—The government of **Mecklenburg**, as a result of liberal agitation, laid before the people late in November a plan for a constitution. The draft, although very undemocratic, might have been accepted by the people had not the *Ritterschaft* rejected it as too liberal by a vote of 36 to 7.

AUSTRIA-HUNGARY.—The government of **Austria** negotiated in March a loan of $37,000,000. The death of Dr. Carl Lueger, the Christian Socialist leader and burgomaster of Vienna, was attended in March by general mourning throughout the empire.—In **Hungary**, the cabinet crisis (see last RECORD, p. 755), has become chronic. The emperor-king has found it impossible to form a ministry committed to the maintenance of the present relations between Austria and Hungary and commanding the support of a majority in Parliament. Dr. Weckerle, the former premier, announced in November that he would accept office only on the following platform: perpetuation of the Magyar hegemony over the Slavs, electoral reform on the basis of democratic principles, introduction of the Hungarian language in military affairs and a compromise of the bank difficulties. M. Kossuth made the admission of Separatists to the cabinet and the realization of electoral reforms conditions for his acceptance of office. On January 4, Dr. de Lukacs was appointed premier and undertook to form a cabinet of moderates, but was badly received at Buda-Pesth and a week later resigned. Count Khuen Hedervary succeeded him, Dr. de Lukacs accepting the portfolio of Finance, and Count Tisza, with what remained of the old Liberty Party, agreeing to support him. The new premier presented his cabinet to Parliament on January 24, announcing a program of conciliation toward Austria and Croatia, universal suffrage and reform of local administration in Hungary. The majority of the Chamber, consisting of the Justh, Kossuth and Clerical parties, resolved to oppose the ministry, whereas the Andrassy or Constitutional party decided to maintain an attitude of friendly neutrality. Count Khuen Hedervary suspended the sitting of Parliament until March 4 and appealed to the country to form a National Labor party which would back up his program. On March 22, unable to make headway against the opposition groups, he dissolved the Chamber by royal decree. His act was the signal for a riotous outbreak, in which both the premier and Count Serenyi, minister of Agriculture, were struck by flying ink-wells and their heads cut open. On March 25, Representative Polonyi was arrested and charged with chief responsibility for the brutal

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scenes. It was thought that the episode might create a popular reaction in favor of Count Khuen Hedervary's government.—The fundamental statutes for **Bosnia** and **Herzegovina** were promulgated at Vienna on February 22.

ITALY.—At the reopening of **Parliament** on November 18, the government presented a plan for the reduction of indirect taxation, chiefly as regarded sugar, the loss of revenue being offset by a progressive income tax. It was also proposed that railway employees should participate in the dividends of the state-owned railways. The first of these measures was opposed by the extreme Conservatives and the extreme Radicals with such success that the Giolitti cabinet resigned on December 2. By the 12th, Baron Sidney Sonnino, who was premier in 1906, had succeeded in forming a new coalition **cabinet**, including Count Guicciardini as minister of Foreign Affairs; General Spingardi, of War; Admiral Bettalo, of Marine; and Signor Sciolojo, of Worship and Justice. Baron Sonnino announced his program of encouraging education, creating departments of labor and railways and maintaining the Triple Alliance. The premier asked for a postponement of the discussion of the Ship Subsidy bill and showed the impossibility of lightening the general burden of taxation in view of the serious and urgent needs of the state and the bad financial conditions. A bill passed the Chamber in February by 181 votes to 94, providing for the unification of all marine services and for the transfer to the ministry of Marine of all questions relating to the sea, such as mercantile shipping, protection of fishing *etc.* The premier further outlined his plans to the Deputies on February 11: he desired to devote six million dollars to subsidize Italian shipping; to build railway stations and to aid in the development of villages and cities destroyed by earthquake; to establish a coöperative bank for wage-earners with an initial capital of three millions; to make stringent rules for the control of foreigners doing business in the kingdom; to reduce the term of compulsory military service from three to two years; and to take energetic steps to decrease the illiteracy of the people. The opposition to the Ship Subsidy bill (see last RECORD, p. 755) wrecked the Sonnino cabinet on March 21. Signor Luigi Luzzatti, minister of Agriculture in the Sonnino cabinet, was then chosen premier, with the marquis of San Giuliano as minister of Foreign Affairs and with practically every group in the chamber except Republicans and Socialists represented in the cabinet. It was generally believed that on account of the Radical contingent, Signor Sacchi as minister of Public Works and Signor Credaro as minister of Public Instruction, anti-clericalism would be a part of the new government's program.—A meeting of some fifty deputies was held in December to support proportional representation and other **electoral reforms.** It was decided to carry on propaganda in Parliament and in the press.—A terrible traffic in **child slaves** was brought to light in December. Official inquiry revealed the existence of a system under which children of the poor were bought in the Italian country districts and drafted into southern France to work in the glass foundries. The minister of the Interior drew the attention of all the prefects of the kingdom to the matter.

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RUSSIA.—After disposing of the agrarian bills about the middle of November, the **Duma** adopted the proposal of a special commission to reëstablish the system of elective justices of the peace, which was introduced in 1864 but repealed in 1889 in favor of the communal courts. The Octobrists introduced a bill to take away the power of the political police in the preliminary examination of political suspects. **Army** and **navy** questions occupied a great deal of the Duma's attention. In December special grants of sixty million dollars were voted for the purpose of army reorganization. Appropriations were made for airships, and a bill was passed providing for the military training of the inhabitants of the Amur and Primorsk regions. Full control of the army departments was to be concentrated in the hands of the minister of War. The naval committee, on the other hand, recommended that no further naval appropriations be made until sweeping reforms had been effected in the Admiralty. The budget committee of the Duma struck a severe blow at the Siberian **exile system** in March by cutting to $34,500 the appropriation for carrying on that department. An opposition bill to abolish the death penalty was reported upon adversely because it was "outside the competence of Parliament," and also because it was doubtful if the death penalty should be abolished in Russia. M. Guchkoff, the Octobrist leader, was elected president of the Duma late in March. He announced that the most pressing need was a national defence measure, which would involve the expenditure within ten years of $650,000,000, of which nearly one-half would be required for ship building and a naval base near Kronstadt.—Several of the most important acts of the Duma, such as those relating to religious freedom, the conditional sentence, the reorganization of the courts and land tenure, were held up by the Council of the Empire. By April, Premier Stolypin had not been able to break the deadlock.—On November 17, the **Finnish** Diet refused the military appropriation bill and rejected the proposal to restrict its power over military matters. As a result it was dissolved the following day by imperial decree. General F. A. Seyn, the "most hated man in Finland," was appointed to succeed General Boeckman as governor-general, and Grand Duke Nicholaievitch, the tsar's cousin, assumed charge of civil affairs. The Russo-Finnish Commission on the relations of the grand-duchy to the empire (see last RECORD, p. 756) recommended in December, by a strictly national vote of six to five, that the Finnish constitution be reduced to a provincial autonomy, and that for imperial purposes the province of Finland send five representatives to the Duma and one to the Council of the Empire. The Finnish elections held in February showed a clear majority for the Agrarian and Socialist parties; and the Old Finns, who favored a compromise with Russia, lost six seats. The Diet opened on March 1 and reëlected Judge Svinhufvid president. The Russo-Finnish bill was denounced as illegal and was sent to committee in April.—The Duma passed a bill in January annexing half the **Polish** provinces of Siedlitz and Lublin to the empire. This was urged several years previously by the late procurator of the Holy Synod, Pobiedonostief, who sought to strengthen the Greek Orthodox church in those

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provinces.—On November 16, by an order of the minister of Justice, the number of **Jewish** students permitted to enter the legal profession was reduced from 50 to 35 per cent within the pale, and from 30 to 20 per cent outside the pale.

THE BALKAN STATES.—In **Turkey** Parliament was opened on November 14 by the sultan. Hilma Pasha, the grand vizier, read the speech from the throne. A deficit of $22,500,000 was shown. The ministry announced its intention of urging a naval program involving the expenditure of a hundred million dollars in the next seven years. Distrust of the cabinet on the part of the Young Turks led to its resignation on December 28. Hakki Bey, the ambassador to Italy, accepted the office of grand vizier and formed a new cabinet.—In **Greece**, the Military League, in control of the political situation, forced the subservient Boule to enact a series of measures. The increase of four million dollars in the budget, chiefly for army purposes, was to be met by an inheritance tax and a graduated income tax, which, as gradually increased, was to permit eventually the removal of the taxes on vineyards and plough animals. By the army bill, compulsory military training was decreed for every man at the age of nineteen for three months' service every year. In December, the harbor dues on foreign shipping and the tax on mineral oil were increased. Meanwhile an element of unrest among the younger officers in the Military League was developing against their superiors and against the new budget. In January, M. Venezelo, the prominent Cretan politician, visited Athens and coöperated with the League officials in prevailing upon the king to give his assent to the convocation of a National Assembly to revise the constitution. A new ministry under M. Stephen Dragoumis was formed on February 1 to carry out this purpose. It was decided to adjourn the Boule, until the new government could revise the legislative program of its predecessors, and in the autumn to convene the National Assembly. A decree of general amnesty, embracing Commander Tibaldos and other naval officers who took part in the mutiny of October 29, was signed on February 8. The voluntary dissolution of the Military League was announced in April.—The **Bulgarian** deficit was placed at $15,200,000. The Sobranye sanctioned in December a German loan to be spent on improvement of harbors and extension of railways. Several Macedonian chiefs were deported for causing disturbances.—Premier Bratiano of **Roumania** was attacked by a discharged railway employee in December and was slightly wounded.

OTHER EUROPEAN STATES.—In the **Norwegian** general elections, held in November, the fusion of the Liberals and the Right carried 63 seats; the Left or government, 47; and the Socialists, 11. Women voted for the first time, a large majority in the towns but only a few in the country districts. The new railway from Bergen to Christiania was opened in November by the king.—At the opening of the **Swedish** Riksdag on January 17, King Gustav referred to the strike of last summer and asked the representatives to work out a measure to prevent strikes.—The special committee of the **Danish** Folkething charged with the investigation of official

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corruption, recommended in December by a majority vote that MM. Christensen and Berg be arraigned before a state tribunal and tried on the charge of complicity in Alberti's frauds. The Folkething adopted the report.—The government of the **Netherlands** in January withdrew its proposal for a thirty-per-cent increase of the tariff.—King Leopold II of **Belgium** died on December 17 and was succeeded by his nephew, Albert I. By the new army bill (see last RECORD, p. 758), which was passed on December 10 by the Deputies and later by the Senate, the peace strength was fixed at 42,800 men. On February 17, the **Congo** budget was passed by the Deputies by 79 votes to 40. The ministry submitted a long list of reforms for the Congo; the gradual introduction within the next two years of "open door" principles; natives to be allowed to pay taxes in money; rubber forests to be replanted by the state; sleeping sickness to be fought; enforced porterage to be suppressed; schools to be opened.—M. Robert Comtesse was elected on December 17 president of the **Swiss** Confederation for the year 1910.—A demonstration in favor of constitutional government occurred in **Monaco** on March 7, and the prince appointed a commission to draw up a constitution.—The **Spanish** municipal elections on December 12 showed gains for the Liberals and Republicans and losses for the Conservatives. The Republicans secured twenty-five of the fifty seats at Madrid. In the same month, the government urged the grant of greater powers to municipalities, and announced that it would open negotiations with the Vatican in order to secure a revision of the concordat of 1851. Growing dissatisfaction with the government's weakness and with its delay in bringing revolutionary leaders to trial was said to be the reason for the downfall in March of the ministry of Señor Moret y Prendergast. Señor Canalejas formed a Radical-Liberal government with strong anti-clerical leanings.

VI. AFRICA AND ASIA

EGYPT.—The premier was assassinated on February 19 by a student, who stated that the dependence of the khedive's government on the British was the reason for his deed. A new cabinet was formed with Mohammed Said Bey as premier.

ABYSSINIA.—The death of Menelik and the accession of his grandson, Prince Lidji Jeassu, was reported in November.

PERSIA.—The government experienced great difficulty in dealing with the financial situation. Added to differences between the Mejliss and the ministry were the popular agitation against Russian occupation, the bitterly *intransigeant* attitude of the clergy toward the trial of constitutional government, and the insistence on the part of foreign bankers on an Anglo-Russian guaranty and the supervision of Persian finances by foreign officials.

CHINA.—An imperial decree of January 30 denied the petition recently submitted by the representatives of the provincial assemblies who had come to Pekin, asking for the immediate establishment of a **parliament**, and reaffirmed the original plan to inaugurate full constitutional government in nine years. The government in January opened several Man-

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churian towns to international trade.—A **mutiny** among the troops of the the viceroy of Canton was suppressed in February with a loss of 500 killed. In the same month a recrudescence of the anti-dynastic agitation was reported in southern Tokien, and in April anti-foreign and anti-Christian demonstrations occurred at Chang-Sha. The imperial officials displayed energy in suppressing these movements.—The government sent an expedition into **Tibet** in February to compel the Dalai Lama, the head of the Lamaist hierarchy, to govern in accordance with orders from Pekin. Lhasa, the capital city, was occupied on February 22, and the Dalai Lama fled to India. The Chinese announced their intention of making the administration of the country purely Chinese.

JAPAN.—Marquis Katsura, the premier and minister of Finance, presented the **budget** estimates for 1910–11 to the Imperial Diet on January 25. The ordinary revenue was estimated at $244,000,000 and the extraordinary at $22,500,000; ordinary expenditure at $210,000 000 and extraordinary at $56,500,000. Early in February a political crisis was threatened on account of the opposition of the Unionist party to the land tax, but a compromise was effected whereby the government agreed to reduce the tax eight per cent, involving a total of $4,000,000, and also to increase official salaries by one-sixth. A special four-per-cent domestic loan of $50,000,000 was negotiated to cover the deficit. Under these conditions, the budget was adopted in February.—In the lower House, on February 24, Baron Komura, minister of Foreign Affairs, explained the proposal to allow aliens in Japan to own land in case the countries from which they come grant the same privilege to Japanese.—A **scandal** was unearthed in March in the Yokosuka naval arsenal, involving losses of at least half a million dollars. Twenty officials were arrested. The influential newspaper, *Nichi Nichi Shimbun*, was outspoken in its charges of corruption in the War Department.

KOREA.—An anti-Japanese outbreak occurred in January at South Phongan in which the rioters murdered the Korean and Japanese officials and burned all the government buildings. The mob was later dispersed by soldiers. The young Korean who assassinated Prince Ito at Harbin in October was found guilty in February and was sentenced to death.

[For colonies and dependencies in Africa and Asia, see the United States, the British Empire and the other European states, *supra*.]

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